Faulkner's words could have just as well have been uttered last year, with the addition of several decades. The people of Haiti deserve hope. They need to know that the world shares their aspiration to be a full member of the community of nations. They have waited a long time. They have waited long enough.

I believe it is important that all of us—this country, other countries of the world—put President Aristide on notice that to flirt with the idea of clinging to power in violation of his country's Constitution would be to risk a huge step backward for the Haitian people. It is long past time to break the cycle of oppression in Haiti. The routine, orderly departure from office of President Aristide will be a major step in that direction.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GRASSLEY). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO REV. RICHARD C. HALVERSON

Mrs. FEINSTEIN. Mr. President, today I rise to recognize and pay tribute to a great friend to the Senate. The former Chaplain of the Senate, Rev. Richard C. Halverson passed away last week. For 14 years he tended to the spiritual needs of this body and all the people who make it work.

Educated at Wheaton College and Princeton Theological Seminary, Reverend Halverson worked in several places including California, his last place of ministry prior to moving to Washington. As the 60th Chaplain of the Senate most of our Nation knew Reverend Halverson from the prayer he delivered every morning. His respectful and quiet manner was a example to us all for how to conduct ourselves and treat others with dignity. I remember with fondness the mornings when I sat as the acting President of this chamber, and listened to Reverend Halverson speak, urge and console not only the Members of this body but everybody listening throughout the Nation.

Besides his duties as Chaplain of the Senate Reverend Halverson also was a minister to the Fourth Presbyterian Church in Bethesda, MD, and an author of several books. He took a lifetime interest in trying speak to the improvement of the moral being of individuals, and the moral health of our Nation. I will miss Reverend Halverson, our country will miss Reverend Halverson, and this body will miss Reverend Halverson, but we are all better because of his life. I hope the example of his life will continue to set a standard for us all.

I know that Reverend Halverson's wife Doris and all the members of his family know better than all of us what an exceptional and spiritual man he was. I want to express my sympathy to them with this loss.

TRIBUTE TO THE REVEREND DR. RICHARD C. HALVERSON

Mr. SPECTER. Mr. President, I have sought recognition to honor the memory of our long-time Senate Chaplain and spiritual leader, Dr. Richard Halverson, who passed away November 28. Dr. Halverson served as Chaplain for 14 years, joining the Senate in 1981 shortly after I, too, entered the Senate. He retired this past March after distinguished service to this body and to the Nation.

As Senate Chaplain, Dr. Halverson played many roles. His prayers would open each daily session of the Senate, often reminding Senators of the higher objectives of our work. When passions ran high over controversial legislation, Dr. Halverson's opening prayers would give Senators pause for reflection and helped maintain the Senate's tradition of reasoned, respectful debate.

I came to know Dr. Halverson well through his attendance at our Bible study sessions, where he came to learn and share his thoughts on the Old Testament. He was a gracious, valued participant and we benefited from his spiritual insight.

As many know, Dr. Halverson established himself as a Chaplain who never tired of selfless service. He was always available to spend time with someone who needed his time, either for spiritual guidance or counsel. His energies were not just directed at Senators, but at their spouses and staffs, and hundreds of Senate employees. In this role, he played a vital role in keeping the fabric of the U.S. Senate together.

The Senate was a better place for having had the compassionate service of Dr. Halverson as its Chaplain for 14 years, and the Nation owes him its gratitude for the role he played in our midst.

My wife, Joan, and I extend our heartfelt condolences to Dr. Halverson's wife, Doris, and his many children and grandchildren. We will all miss his faithful, caring presence.

THE BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, as of the close of business Friday, December 1, the Federal debt stood at $4,989,268,168,883.55. We are still about $11 billion away from the $5 trillion mark. Unfortunately, we anticipate hitting this mark sometime later this year or early next year.

On a per capita basis, every man, woman, and child in America owes $18,939.35 as his or her share of that debt.

CHARITABLE GIFT ANNUITY LEGISLATION

Mr. DOLE. Mr. President, I am pleased that the Senate passed two important bills impacting the charitable community—H.R. 2525 and H.R. 2519. Enactment of these bills was urgently needed to put a stop to unwarranted litigation and ensure that charities can continue to accept gift annuities from generous donors across the country. For these reasons it was important for me to clear the way to immediate passage of the bills.

Charities are critical to the Nation and to communities across the country. And charitable gift annuities are an important method for them to raise much-needed funds. This legislation will allow universities, hospitals, and other important local and national charities to continue their significant contributions to communities and the needy.

I commend my colleagues in the House and Senate for working quickly to craft this legislation. Almost 2,000 charities across the country have been defendants in unnecessary and unwarranted litigation. This congressional act will end the litigation, freeing charities to continue their important work.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Before the Senator starts, the Chair will announce morning business is closed.

PARTIAL-BIRTH ABORTION BAN ACT

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of H.R. 1833, which the clerk will now report.

The legislative clerk read as follows:

A bill (H.R. 1833) to amend title 18, United States Code, to ban partial-birth abortions.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The Senator from Utah is now recognized.

Mr. HATCH. Mr. President, I rise today to speak in support of H.R. 1833, the Partial-Birth Abortion Ban Act of 1995.

I understand that many people on both sides of this issue have very strongly held beliefs. I respect those whose views differ from my own. And, I condemn the use of violence or any other illegal method to express any point of view on this issue.

This bill, however, presents a very narrow issue: whether one rogue abortion procedure that has probably been performed only by a handful of abortion doctors in this country, that is never medically necessary, that is not the safest medical procedure available under any circumstances, and that is morally reprehensible, should be banned.

This bill does not address whether all abortions after a certain week of pregnancy should be banned, or whether late-term abortions should only be permitted in certain circumstances. It bans one particular abortion procedure.

I chaired the Judiciary Committee hearing on this bill that was held on November 17. After hearing the testimony presented there, as well as seeing some of the submitted material, I must say that I find it difficult to comprehend how any reasonable person could examine the evidence and continue to defend the partial-birth abortion procedure.

That procedure involves the partial delivery, in the late second or third trimester of pregnancy, of an intact fetus into the birth canal. The fetus is delivered from its feet through its shoulders, so that only its head remains in the uterus. Then, either scissors or another instrument is used to poke a hole in the base of the skull. This is a living baby at this point, in a late trimester of living. Once they poke that hole in the base of the skull, at that point, a suction catheter is inserted to suck out the brains. This bill would simply ban that procedure.

The bill was first brought up on the Senate floor in early November. On November 8, the Senate voted to commit the bill to the Judiciary Committee for a hearing and a report of the bill within 19 days, which included a holiday recess.

We held a comprehensive, 6½-hour hearing on the bill on November 17. To facilitate consideration on the floor, I have directed that a hearing record be printed on an expedited basis.

In addition, so that all Senators can have immediate access to the testimony and other evidence adduced at the hearing, last week I had the committee distribute to each Senator a photocopied set of the entire hearing record, including inserts and written submissions.

The committee heard testimony from a total of 12 witnesses presenting a variety of perspectives on the bill. I wanted to ensure that both sides of this debate had a full opportunity to present their arguments on this issue, and I think that the hearing bore that out.

Brenda Shafer, a registered nurse who worked in Dr. Martin Haskell's Ohio abortion clinic for 3 days as a temporary nurse in September 1993, testified as to her personal experience in observing Dr. Haskell perform the procedure that would be banned by this bill. Dr. Haskell is one of only two—maybe four doctors who have acknowledged performing the procedure—only two have acknowledged it, but there may be four of them who do this procedure.

The committee also heard testimony from four ob-gyn doctors—two in favor of the bill and two against, from an anesthesiologist, from an ethicist, and from three women who had personal experiences either with having a late-term abortion or with declining to have a late-term abortion. Finally, the committee also heard from two law professors who discussed constitutional and other legal issues raised by the bill.

The hearing was significant in that it permitted the issues raised by this bill to be fully aired. I think that the most important contribution of the hearing to this debate is that the hearing record puts to rest a number of inaccurate statements that have been made by opponents of the bill and that have unfortunately been widely covered in the press.

Because the Judiciary Committee hearing brought out many of the facts on this issue, I would like to go through the most important of those for my colleagues to clear up what I think have been some of the major misrepresentations—and simply points of confusion—on this bill.

MISREPRESENTATION NO. 1

The first and foremost inaccuracy that we must correct once and for all concerns the effects of anesthesia on the fetus of a pregnant woman. I must say that I am personally shocked at the irresponsibility that led some opponents of this bill to spread the myth that anesthesia given to the mother during a partial-birth abortion is what kills the fetus.

Opponents of this measure presumably wanted to make this procedure appear less barbaric and make it more palatable. In doing so, however, they have not only misrepresented the procedure—which is bad enough—but they have spread potentially life-threatening misinformation that could prove catastrophic to women's health.

By claiming that anesthesia kills the fetus, opponents have spread misinformation that could deter pregnant women who might desperately need surgery from undergoing surgery for fear that the anesthesia could kill or brain-damage their unborn children.

Let me illustrate how widespread this misinformation has become:

In a June 23, 1995, submission to the House Judiciary Constitution Subcommittee, the late Dr. James McMahon, the other of the two doctors who has admitted performing the procedure, wrote that anesthesia given to the mother during the procedure caused fetal demise.

Syndicated columnist Ellen Goodman wrote that, when statements of supporters of the bill are reviewed, ''You wouldn't even know that anesthesia ends the life of such a fetus before it comes down the birth canal.''

Let me note also that, of course, if the fetus was dead before being brought down the birth canal, then this bill by definition would not cover the procedure performed to abort that fetus. The bill covers only procedures in which a living fetus is partially delivered.

All but the head of this living fetus is outside, and then they puncture the back of the skull and suck out the brain so that the skull collapses and the baby can then be pulled out. There is no doubt in my mind that the reason the head is in is so that they will not be accused of infanticide.

An editorial in USA Today on November 3, 1995, also stated, ''The fetus dies from an overdose of anesthesia given to its mother.''

In a self-described fact sheet circulated to Members of the House, Dr. Mary Campbell—the medical director of Planned Parenthood who testified at the Judiciary Committee hearing—wrote:

> The fetus dies of an overdose of anesthesia given to the mother intravenously. A dose is calculated for the mother's weight which is 50 to 100 times the weight of the fetus. The mother gets the anesthesia for each insertion of the dilators, twice a day. This induces brain death in a fetus in a matter of minutes. Fetal demise therefore occurs at the beginning of the procedure while the fetus is still in the womb.

When that statement was referenced to the medical panel at the Judiciary Committee hearing by Senator ABRAHAM, the president of the American Society of Anesthesiologists, Dr. Norig Ellison, flatly responded, ''There is absolutely no basis in scientific fact for that statement.''

The American Society of Anesthesiologists was invited to testify at our hearing precisely to clear up this obvious misrepresentation. They sought the opportunity to set the record straight.

What was terribly disturbing about this distortion was that it could endanger women's health and women's lives. The American Society of Anesthesiologists has made clear that they do not take a position on this legislation, but that they came forward out of concern for this harmful misinformation.

The spreading of this misinformation strikes me as a very sad commentary on the lengths that those who support abortion on demand, for any reason, at virtually any time during pregnancy, and apparently regardless of the method, will do to defend each and any procedure, and certainly this procedure. The sacrifice of intellectual honesty is very disheartening.

As Dr. Ellison testified, he was

> Deeply concerned . . . that the widespread publicity given to Dr. McMahon's testimony may cause pregnant women to delay necessary and perhaps lifesaving medical procedures, totally unrelated to the birthing process, due to misinformation regarding the effect of anesthetics on the fetus.

He stated that the American Society of Anesthesiologists, while not taking a position on the bill,

> . . . have nonetheless felt it our responsibility as physicians specializing in the provision of anesthesia care to seek every available forum in which to contradict Dr. McMahon's testimony. Only in that way, we believe, can we provide assurance to pregnant women that they can undergo necessary surgical procedures safely, both for mother and unborn child.

Dr. Ellison also noted that, in his medical judgment, in order to achieve neurological demise of the fetus in a partial-birth abortion procedure, it would be necessary to anesthetize the mother to such a degree as to place her own health in jeopardy.

In short, in a partial-birth abortion, the anesthesia does not kill the fetus. The baby will generally be alive after

partly being delivered into the birth canal and before having his or her skull opened and brain sucked out.

That is also consistent with evidence provided by Dr. Haskell describing his use of the procedure. In his 1992 paper presented before the National Abortion Federation, which is part of the hearing record, Dr. Haskell described the procedure as first involving the forceps-assisted delivery into the birth canal of an intact fetus from the feet up to the shoulders, with the head remaining in the uterus. He does not describe taking any action to kill the fetus up until that point.

In a 1993 interview with the American Medical News, Dr. Haskell acknowledged that roughly two-thirds of the fetuses he aborts using the partial-birth abortion procedure are alive at the point at which he kills them by inserting a scissors in the back of the head and suctioning out the brain.

Finally, in a letter to me dated November 9, 1995, Dr. Watson Bowes of the University of North Carolina Medical School wrote,

> Although I have never witnessed this procedure, it seems likely from the description of the procedure by Dr. Haskell that many if not all of the fetuses are alive until the scissors and the suction catheter are used to remove brain tissue.

Simply put, anesthesia given to a mother does not kill the baby she is carrying.

MISREPRESENTATION NO. 2

Let me move on to the next misrepresentation. Another myth that the hearing record debunks is that the procedure can be medically necessary in late-term pregnancies where the health of the mother is in danger or where the fetus has severe abnormalities.

Now, there were two witnesses at the hearing who testified as to their experiences with late-abortions in circumstances in which Dr. McMahon performed the procedure. Both women, Coreen Costello and Viki Wilson, received terrible news late in their pregnancies that the children they were carrying were severely deformed and would be unable to survive for very long.

I would like to make it absolutely clear that nothing in the bill before us would prevent women in Ms. Costello's and Ms. Wilson's situations from choosing to abort their children. That question is not before us, and it is not one that we face in considering this narrow bill.

I also would like to point out that I have the utmost sympathy for women—and their husbands and families—who find themselves receiving the same tragic news that those women received.

Regardless of whether they aborted the child or decided to go through with the pregnancy, which is what another courageous witness at our hearing, Jeannie French of Oak Park, IL, chose to do—and as a result, her daughter Mary's heart valves were donated to other infants—their experiences are horrendous ones that no one should have to go through.

The testimony of all three witnesses was among the most heart-wrenching and painful testimony I have ever heard before the committee. My heart goes out to those three women and their families as well as any others in similar situations.

However, the fact is that medical testimony in the record indicates that even if an abortion were to be performed under such circumstances, a number of other procedures could be performed, such as the far more common classical D&E procedure or an induction procedure.

When asked whether the exact procedure Dr. McMahon used would ever be medically necessary—even in cases like those described by Ms. Costello and Ms. Wilson, several doctors at our hearing explained that it would not. Dr. Nancy Romer, a practicing Ob-Gyn and clinical professor in Dayton, Ohio, stated that she had never had to resort to that procedure and that none of the physicians that she worked with had ever had to use it.

Dr. Pamela Smith, the director of medical education in the department of obstetrics and gynecology at the Mount Sinai Medical Hospital Center in Chicago, stated that a doctor would never need to resort to the partial-birth abortion procedure.

MISREPRESENTATION NO. 3

This ties in closely to what I consider the next misrepresentation made about the partial-birth abortion procedure: the claim that in some circumstances a partial-birth abortion will be the safest option available for a late-term abortion. Testimony and other evidence adduced at the Judiciary Committee hearing amply demonstrate that this is not the case.

An article published in the November 20, 1995, issue of the American Medical News quoted Dr. Warren Hern as stating, ''I would dispute any statement that this is the safest procedure to use.'' Dr. Hern is the author of ''Abortion Practice,'' the Nation's most widely used textbook on abortion standards and procedures. He also stated in that interview that he ''has very strong reservations'' about the partial-birth abortion procedure banned by this bill.

Indeed, referring to the procedure, he stated, ''You really can't defend it. I'm not going to tell somebody else that they should not do this procedure. But I'm not going to do it.''

In fairness to Dr. Hern, I note that he does not support this bill in part because he feels this is the beginning of legislative efforts to chip away at abortion rights. We have included a statement from him in the RECORD. His opinion on the procedure, however, is highly instructive.

I think Dr. Nancy Romer, a professor in the department of obstetrics and gynecology at the Wright State University School of Medicine and the vice chair of the department of obstetrics and gynecology at Miami Valley Hospital, both in Dayton, OH, explained it best. I will quote her entire statement on this point:

> If this procedure were absolutely necessary, then I would ask you, why does no one that I work with do it? We have two high-risk obstetricians, and a medical department of about 40 obstetricians, and nobody does it. We care for and do second-trimester abortions, and we have peer review. We are watching each other, and if we truly were doing alternative procedures that were killing women left and right, we would be out there looking for something better. We would be going to Dr. Haskell and saying, please, come help us do this. And we are not. We are satisfied with what we do. We are watching each other and we know that the care that we provide is adequate and safe.

I think that says it all as far as safety is concerned.

MISREPRESENTATION NO. 4

Another misrepresentation that should be set straight concerns claims that the partial-birth abortion procedure that would be banned by this bill is in fact performed only in late-term pregnancies where the life of the mother is at risk or where the fetus is suffering from severe abnormalities that are incompatible with life.

I certainly do not dispute that in a number of cases the partial-birth abortion procedure has been performed where the life of the mother was at risk or where the fetus was severely deformed.

Substantial available evidence indicates, however, that the procedure is not performed solely or primarily where the mother's life is in danger, where the mother's health is gravely at risk, or where the fetus is seriously malformed in a manner incompatible with life.

The fact of the matter is—and I know this is something that opponents of the bill have not faced—this procedure is being performed where there are only minor problems with the fetus, and for purely elective reasons.

Dr. Haskell stated in testimony given under oath last month, on November 8, 1995, in Federal district court in Ohio, that he performs the procedure on second trimester patients for some medical and some not so medical reasons. [See Dist. Ct. Tr. at 104.] That court transcript is part of the hearing record.

In transcripts from Dr. Haskell's 1993 interview with the American Medical News—also part of the hearing record—Dr. Haskell states ''most of my abortions are elective in the 20–24 week range. In my particular case, probably 20 percent are for genetic reasons [and] the other 80 percent are purely elective.'' Meaning that 80 percent of those kids that are destroyed are normal kids.

Dr. Romer testified that she has cared for patients who had received a partial-birth abortion from Dr. Haskell for reasons that were purely based on the woman not wanting a baby, for—as she put it—social reasons.

Most important, however, medical testimony at our hearing indicated that a health exception in this bill is

not necessary because other abortion procedures are in fact safer and better for women's health.

As for examples of overly broad health rationales for this procedure, Dr. McMahon indicated—in a 1995 letter submitted to Congress and in a 1993 interview with the American Medical News—that, although all of the third trimester abortions he performed were nonelective, approximately 80 percent of the abortions he performed after 20 weeks of pregnancy were therapeutic.

Dr. McMahon then provided the House Judiciary Committee with a listing of the so-called therapeutic indications for which he performed the procedure. That list is a real eye opener.

The single most common reason for which the partial-birth abortion was performed by him was maternal depression. He also listed substance abuse on the part of the mother as a therapeutic reason for which he performed the procedure.

In terms of fetal so-called abnormalities, Dr. McMahon's own list indicates that he performed the procedure numerous times in cases in which the fetus had no more serious a problem than a cleft lip.

Dr. Haskell has similarly acknowledged that he is not performing the procedure in critical instances of maternal or fetal health. In Dr. Haskell's testimony in Federal district court in Ohio last month, Dr. Haskell stated: ''Patients that are critically ill at the time they're referred for termination, I probably would not see. Most of the patients that are referred to me for termination are at least healthy enough to undergo an operation on an outpatient basis or else I would not undertake it.''

When asked about the specific health-related reasons for which he performed the partial-birth abortion procedure, Dr. Haskell specified that he has performed the procedure in cases involving high blood pressure, diabetes, and agoraphobia on the part of the mother. [See Dist. Ct. Tr. at 105.] Of course, agoraphobia is the fear of going outside. Dr. Haskell acknowledged that in district court. That, to me, is outrageous.

Now, let me be perfectly clear that I do not doubt that in some cases this procedure was done where there were life-threatening indications.

However, I simply must emphasize two points.

First, those cases are by far in the minority. We should get the facts straight so that our colleagues and the American people understand what is going on here.

Second, the most credible testimony at our hearing—confirmed by other available evidence—indicates that even where serious maternal health issues exist or severe fetal abnormalities arise, there will always be other, safer abortion procedures available that this bill does not touch.

MISREPRESENTATION NO. 5

Finally, the next misrepresentation I would like to correct concerns whether this procedure exists. That claim should be put to rest once and for all.

Some opponents of this measure still insist on claiming that the procedure banned by this bill—the partial-birth abortion procedure—does not exist solely because the two doctors who have admitted performing the procedure—the late Dr. McMahon of Los Angeles and Dr. Haskell of Ohio—used different terms for the procedure.

The bill clearly defines the term partial-birth abortion as ''an abortion in which the person performing the abortion partially vaginally delivers a living fetus before killing the fetus and completing the delivery.'' I think that the term partial-birth abortion does provide an accurate, shorthand description of that full definition.

Dr. Haskell refers to the procedure as a D&X, while the late Dr. McMahon referred to the procedure as an intact D&E. As medical witnesses at the hearing pointed out, the procedures—by whatever name—are virtually unheard of in the medical and scientific literature.

As Dr. Watson Bowes of the University of North Carolina at Chapel Hill wrote to me, ''The term 'partial-birth abortion' is accurate as applied to the procedure described by Dr. Martin Haskell in his 1992 paper. There is no standard medical term for this method.''

I submit that there is no medically accepted terminology for the procedure because the procedure has not been medically accepted.

There can be no question, however, that the procedure banned by this bill does exist and has been performed repeatedly. That is disturbing. It is troubling.

We should be confronting the ethical dilemmas the procedure raises rather than sticking our heads in the sand and quibbling about whether the procedure exists under any particular name or another.

On that note, I would like to close by highlighting a statement made at our hearing by Helen Alvare of the National Conference of Catholic Bishops. She remarked that opponents of this bill keep asking whether enacting it would be the first step in an effort to ban all abortions.

In her view, however, the real question should be whether allowing this procedure would serve as a first step toward legalized infanticide. I urge the bill's opponents to ask themselves this question. What is the real purpose of this procedure?

That is the fundamental problem with this procedure. It involves killing a partially delivered baby.

The previous debate on this bill ended when the Senate voted to require a Judiciary Committee hearing. Let me say to my colleagues in the Senate that the testimony presented during this hearing more than confirmed my view that this procedure is never medically necessary and should be banned.

This testimony, regardless of one's view on the broader issue of abortion, provides ample justification for an ''aye'' vote on H.R. 1833.

Mr. SMITH addressed the Chair.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from New Hampshire.

Mr. SMITH. Thank you very much, Mr. President. Senator BOXER and I have an informal agreement that after approximately 30 minutes I would yield the floor to her, if the Chair would be kind enough to remind me if I get carried away.

Mr. President, I rise today in very strong support of H.R. 1833, the Partial-Birth Abortion Ban Act of 1995. I at this time would like to express my sincere gratitude to the Senator from Utah, Senator HATCH, first, for his splendid leadership on the issue of protecting the rights of the unborn. He has long been a champion of that issue, long before this Senator came to the Senate. But, also, I thank him for conducting the hearing, doing it in a fair manner, allowing all witnesses on both sides of the issue to be heard. He certainly performed a very valuable service, and I very much owe him a debt of gratitude for that.

Mr. President, as I am sure you know, initially I opposed the motion to refer this bill to the Senate Judiciary Committee for a hearing given the full record developed during the House's consideration of the bill. I did not really believe that the Senate needed to have a hearing. The House had extensive hearings on the bill, as you know, and quite a bit of debate.

Ultimately, however, I agreed to support the motion to refer the bill to the committee for the hearing because I was convinced that the more my colleagues could learn about this procedure about the brutality and the inhumaneness of it, the so-called partial-birth abortion procedure, I believed that the more my colleagues learned, the more I would have an opportunity to get more votes, frankly, in opposition to it. I believe that the bill will garner support, in other words, garner support to outlaw this procedure.

Later in my remarks today I am going to comment in some detail about the excellent hearing held by Senator HATCH and the Judiciary Committee on H.R. 1833. That hearing was held on November 17.

But first, Mr. President, I would like to remind my colleagues of just why it is that we are here. I want to focus again one more time on exactly what a partial-birth abortion is. The term ''birth'' involved in this procedure is somewhat interesting in the sense that it is called a partial birth, yet it is an abortion. I want to remind my colleagues of why a supermajority, a two-thirds majority, of the House of Representatives voted to pass this bill on November 1—two-thirds. And I would also like to remind my colleagues of why that supermajority encompassed both party and ideological lines on both sides, why it crossed those party

and ideological lines, why it included such people as House minority leader RICHARD GEPHARDT, Speaker GINGRICH, House minority whip DAVID BONIOR, and House majority leader DICK ARMEY, pro-choice Democrat PATRICK KENNEDY, and pro-choice Republican SUSAN MOLINARI.

Mr. President, the sole purpose of H.R. 1833 is to ban a very specific method of abortion that is performed at a time in the gestation period of about 5 months and continues on through the ninth month of gestation. So at any period of time between the fifth and the ninth month of gestation right up until the day of birth, these abortions can be and are performed.

These are late-term babies, Mr. President. There really is not any other term for it. You can cover it up and coat it a little bit by using other terms. But they are late-term babies, the youngest of whom—the youngest of whom—at 5 months may have a fighting chance to live on their own outside of the womb, and the older of whom unquestionably, unless there were severe abnormalities or birth defects, could live outside the womb.

So this specific abortion method called partial-birth abortion—that is what it is called—it is a straightforward, plain English term for a procedure in which a living baby's body is brought entirely into the birth canal, except for the child's head, which the abortionist holds inside the mother's womb, in other words, keeps the child from coming completely out of the womb, restrains the child, keeping the head inside the womb before he punctures the baby's head with scissors and inserts a suction catheter inside that incision and literally sucks the brains out of the child.

It is understandable that the defenders of partial-birth abortions do not like the clearly descriptive and entirely accurate term ''partial-birth abortion.'' I think most people on both sides of the aisle would, if they do not always agree with, certainly respect the words of Pulitzer Prize winning commentator George Will, who points out in an excellent column in the latest issue of Newsweek—he says, ''Pro-abortion extremists object to that name, preferring,'' instead now of partial-birth abortion, ''preferring 'intact dilation and evacuation' for the same reason that the pro-abortion movement prefers to be called pro-choice.''

Mr. Will goes on to conclude that what is intact here is a baby. That is what is intact, a baby. So, instead of ''partial-birth abortion,'' we call it ''intact dilation and evacuation,'' the removal of a child from the womb after taking the child's life by inserting a catheter into the back of the head through an incision made by scissors, with no anesthetic, and suck the brains out.

As I remind my colleagues today what a partial-birth abortion is, I am going to again use a series of illustrations that depict the partial-birth abortion procedure. I have done this before on the floor. I have been criticized for it. The press has not gotten it right. Some of them have not gotten it right. I was accused of showing photographs of aborted babies. I was accused of displaying a rubber fetus, whatever that is, all kinds of distortions of the record.

But what I have here are simple medical diagrams. That is all they are. They simply say what the procedure is and simply show it in pictures. I am going to show it again briefly here to show what we mean by partial-birth abortion because I think we should understand what it is.

As I do it, keep in mind that these illustrations have appeared in the American Medical Association's official newspaper, the AMA News. These are not my drawings. They are not drawn by the pro-life movement. They are not drawn by anyone other than they appeared in the AMA News. So they are medically accurate, they are straightforward, they are honest depictions of the partial-birth abortion procedure as described in an 8-page paper written in 1992 by Dr. Martin Haskell who has confessed, admitted, to performing more than 1,000—1,000—of these abortions—1,000 by one doctor, 1,000 abortions between the 5th and 9th month, Mr. President. Dr. Haskell's papers are included in the Judiciary Committee's official record of its November 17 hearing on this bill.

In a tape recorded interview with the AMA News on July 5, 1993, Dr. Haskell himself said:

> The drawings are accurate from a technical point of view.

Moreover, during a June 15, 1995 hearing before the House Judiciary Committee's Constitution Subcommittee, Johns Hopkins University Medical School Prof. Courtland Robinson, testifying on behalf of the National Abortion Federation, was questioned by Congressman CHARLES CANADY about the same illustrations of the partial-birth abortion procedure that I will be showing my colleagues again today. Dr. Robinson agreed that they were technically accurate, commenting ''this is exactly probably what is occurring at the hands of the physicians involved.''

This is a person who testified for the National Abortion Federation. So I think we ought to lay to rest the misrepresentations and the distortions and, frankly, the outright lies that have been perpetrated about me and about what I have presented on this floor. These are medically approved drawings that even the other side says are technically accurate.

Dr. Watson Bowes, a professor of obstetrics and gynecology at the medical school of the University of North Carolina Chapel Hill, also, in his own right, an internationally recognized expert on fetal and maternal medicine, wrote a letter to Congressman CANADY:

> Having read Dr. Haskell's paper, I can assure you that these drawings accurately represent the procedure described therein.

Let us look at the first illustration. With the aid of ultrasound, the abortionist determines the position the baby is in, and after he determines that, he reaches in with the forceps and takes the child by the feet with the forceps and turns it around inside the womb. Keep in mind that this is a late-term living baby.

Then, as you can see, Mr. President, the baby's leg is pulled out into the birth canal with the aid of the forceps. The baby is turned around so that it is a breech birth, because, obviously, if the head comes out first, it becomes a breathing child. If the feet come out first, it can be aborted, not a living thing. That is what we are told.

So the abortionist has to turn the child around. Usually it is the other way around, but now we turn the child around and make a breech birth here. So the baby's leg comes through the cervical opening and into the birth canal.

In the third illustration, we see that the abortionist now has the child enough removed from the forceps to be able to take the child in his or her hands from, as you can see in the drawing here, somewhere about midtorso. The abortionist takes ahold of this child, and he or she begins to pull the child all the way out of the womb and into the birth canal, with the exception of the head.

Let me just pause here for a moment to reflect on what is happening. If this were a doctor and this were a happy time, a woman wanting this child for whatever reason, this little child would be a patient—a patient, Mr. President. But this child is not a patient here, not in this procedure. There is no choice of his or her own. This child is not a patient. This child is a victim of the abortionist's hands. What could be kind, loving, gentle hands are now the hands of death, because, sadly, the abortionist's purpose we now see coming in the fourth illustration.

The horror of this is beyond all imagination, as far as I am concerned, having witnessed the birth of three of my own children, knowing what a beautiful experience that is to see. The abortionist holds the baby by the shoulders—I mean holds the baby by the shoulders—to prevent the child from being born, because the moment the head comes through the birth canal and out into the world, it has the protection of the Constitution of the United States.

So this doctor has to be very sure that this little head does not slip out, so he holds the child, he prevents the child from being born, because—and this may be a little girl or a little boy, but let us, just for the sake of argument, call it a little girl—if her head slips out, she is born alive. We cannot let that happen if we are abortionists, can we? That is a problem.

The columnist, John Leo, pointed out in his excellent article in the November 20 issue of U.S. News & World Report:

Stopping the head just short of birth is a legal figleaf for a procedure that doesn't look like abortion at all. It sounds like infanticide.

So, as I said, Mr. President, the abortionist holds the baby's head with the hand tightly. Obviously, the muscular action here, the contractions move this child from the womb. That is natural. But after the gripping at the shoulders with these hands in an unspeakably brutal act of, I believe, inhumanity, the abortionist jams a pair of scissors into the baby's skull. This is a late-term baby, fully capable of pain and feeling pain, and before he withdraws those scissors, which he opens to separate the wound, he enlarges that hole at the base of the baby's skull and inserts that catheter.

As you can see in the last drawing, what was moments before a living baby now hangs limp in the hands of the abortionist.

Remember what happens: Catheter in, suck out the contents of the—it is interesting, some of the pro-choice, pro-abortion people call it the contents, the contents of the head, not the brains.

You see, it sounds too much like a baby or a child to say ''brains,'' so you say ''contents,'' as if we were talking about a can of beans or something that you empty. Then in order to kill this baby, he uses that suction catheter to suck the baby's brains out—not the contents of some inanimate object—and the dead baby then is removed.

I ask my colleagues, if that is not a baby there, what is it? I ask anybody who wants to take the floor today and say to me that you support this procedure, tell me what it is if it is not a baby. And if it is a baby, then we are killing it, are we not? If it is not a baby, what is it? What is it?

I ask my colleagues and anyone else who may be listening, if you picked up the newspaper tomorrow morning in your hometown, wherever that may be—Anywhere, U.S.A.—and the front page of that paper said that the local pound decided to kill 100 unwanted puppies and kittens, with no anesthetic, by putting scissors in the back of the neck, by inserting a catheter in the back of the head and sucking the brains out, what would you think? My colleagues, ladies and gentlemen, American people, I think you would be outraged, I think you would be protesting probably in front of the SPCA; you would be calling it horrible, disgraceful, and saying, ''What are we doing? Why would I put my dog to sleep in such an inhumane manner?''

Well, Mr. President, we are doing it to children. We are doing this to children. There you have it. But for the decision of someone else, not the baby, what could have been that beautiful journey in the process of birth, through the birth canal and into the world, which each and every one of us took because nobody got here without being born—there may have been other procedures, I grant, such as a cesarean, where you may have been born, but in most cases through the birth canal. But that beautiful journey from our mother's safe, warm womb in the birth canal and out into the wonderful world. But that is not what happens here. It is perverted by the abortionist into a savage rendezvous with death. That is exactly what it is. It is a rendezvous with death.

Do you know what? I have been called an extremist because I have said that, because I have been down here on the floor showing these drawings, pointing out to the American people what this is. I am accused of being an extremist. What is the person who performs this act? What is that person? In a partial-birth abortion, the journey of life, the beautiful process of birth—birth—this is not the average abortion we are talking about. They are bad enough, and everybody knows how I feel about those, but that is not the issue here. This is the issue of late-term abortions, which is why so many pro-choice, clear-thinking, sensible Democrats and Republicans, liberals and conservatives, in the House of Representatives voted to stop it, because they were horrified by it.

The people who do it are the extremists. That is who the extremists are. This journey of life is interrupted in the ultimate act of violent oppression. The abortionist uses his brute strength, his powerful hands, against an innocent little child, helpless, defenseless child. He stops her journey into life, holds her by the shoulders and jams scissors into her head and removes her brains.

Mr. President, this is the United States of America. When I came to the Senate in 1991, I never really dreamed that I would have to take the floor of the Senate and defend the right of a child, perhaps as old as 8½ to 8¾ months in the uterus, to have to stand here and defend this child. What a sick, horrible perversion.

How could this be in this country? How could we possibly stand by in this country and let this happen? But then, again, there is great precedent for this, Mr. President, because we saw it in the Civil War, prior to the Civil War, a couple hundred years prior to the Civil War—almost 300 years prior to the Civil War—well, 200 anyway. Slavery, which was a brutal act against our fellow mankind. We stood around for a couple hundred years before we stopped that. But here we are.

What have we come to as a people? We stand here on the floor day after day, month after month, year after year and talk about the great issues of the day—the deficit, the debt, whether or not we ought to send troops to Bosnia, the Persian Gulf, nominations of Supreme Court Justices, great issues. We have had some great debates here. But what have we come to, to be here on the floor, to have to try to stop something as barbaric as this? It should be stopped. It should not be happening. We should not have to be here.

A little baby has a right to be born. In a partial-birth abortion, a doctor who swore to the Hippocratic oath ''to do no harm'' does the worst possible harm to the youngest, most defenseless little patient that he could ever have. No wonder the foremost expert practitioner of this procedure, Dr. Martin Haskell, the man who admittedly performed a thousand of them, did not have the guts to accept Chairman HATCH's invitation to appear before the Senate Judiciary Committee to defend his procedure.

Mr. President, we spent hours on the floor of the Senate in the early part of November with my colleagues on the other side of this issue demanding a hearing. ''We must have a hearing,'' I heard said. ''We must have these people come in and tell us about this procedure, because we can defend it.'' But Dr. Haskell did not come.

In the November 20 issue of the American Medical Association's AMA News, one of Dr. Haskell's fellow abortionists really told us why Dr. Haskell did not have the guts to appear at the Senate Judiciary Committee hearing. Here is what he said, speaking of the procedure, and this is Dr. Warren Hearn, author of ''Abortion Practice,'' the Nation's most widely used textbook on abortion standards and procedures: ''You can't defend it.'' He said, ''You can't defend it.''

That is why he did not show up. You cannot defend it.

Thankfully, however, Mr. President, a nurse who once witnessed one of Dr. Haskell's partial-birth abortions, Brenda Pratt Shafer, did have the guts to appear before the Judiciary Committee. This is how she described what she saw:

I am Brenda Pratt Shafer, a registered nurse with 13 years of experience. One day in September, 1993, my nursing agency assigned me to work at a Dayton, Ohio, abortion clinic. I had often expressed pro-choice views to my two teenage daughters, so I thought this assignment would be no problem for me. But I was wrong. I stood at a doctor's side as he performed the partial-birth abortion procedure, and what I saw is branded forever on my mind. The mother was 6 months pregnant. The baby's heartbeat was visible, clearly, on the ultrasound. The doctor went in with forceps and grabbed the baby's legs and pulled them down through the birth canal. Then he delivered the baby's body and the arms, everything but the head. The doctor kept the baby's head just inside the uterus. The baby's little fingers were clasping and unclasping and his feet were swinging.

Then the doctor stuck the scissors through the back of his head, and the baby's arms jerked out in a flinched, startled reaction, like a baby does when he thinks he might fall. The doctor opened up the scissors, stuck a high-powered suction tube into the opening, and sucked the baby's brains out. Now, the baby was completely limp.

Then, the last line—and I am going to end here and yield the floor to Senator BOXER—the last, most compelling line, ''I never went back to that clinic, but I am still haunted by the face of that little boy—it was the most perfect, angelic face I have ever seen.'' Brenda Pratt Shafer.

I yield the floor.

Mrs. BOXER. Mr. President, it is a privilege for me to take to the floor this evening in a tough debate and one that I hope will lead the Senate to amend this bill.

This bill is flawed because it makes no exception, even for the life of the mother. It criminalizes a procedure, which means that doctors, by virtue of using it without having a chance to even explain it, will be hauled into court, perhaps into jail. It sets us on a slippery slope that greatly concerns me.

I speak as a mother. I speak as a grandmother. I speak as someone who came here in part to protect people without a voice, the most vulnerable among us.

We hear similar arguments that my friend engaged in the last time that this was brought to the floor, and the Senate wisely referred it to the Judiciary Committee. I want to thank my colleagues for voting with us on that. We had to fight to get an agreement. This was going to be rushed through, without hearing from the women who had a story to tell, without hearing from the doctors who think it is necessary, without hearing from the constitutional lawyers.

Very wisely, we took a deep breath and we sent this to the committee. It was a good hearing. It was a balanced hearing. I hope Members will read the record very closely. Then I hope they will support amending this bill.

I want to make a couple of comments before I go into a presentation that I hope will pinpoint my arguments.

Mr. President, not every birth is a beautiful journey. We pray to God that everyone we know and love—everyone, every woman, every family—can experience the beautiful journey of birth without problem. I know a lot of women have had problems. It is not always easy. Not every fetus finds a safe and warm womb. No, they do not. Some are born very early. Some develop terrible diseases and problems. Some women are diagnosed with serious cancer, and they know they could lose their life if they proceed to term.

Life is not always, as somebody once said, a bowl of cherries. Sometimes it is very hard.

Here we stand as Senators—not as doctors—outlawing a procedure, a medical procedure. I daresay if you were at home and you had never heard anything about this before and you came back from, say, another planet, and you turned on your TV and you were channel surfing and came to a station and were watching us, you would probably think this is a medical school lecture. I watched the beginning of this debate on TV, and it was just like a medical lecture. There was talk about what anesthesia does. There was talk about what kind of instruments are used. There was talk about things that we have no knowledge of. We see medical drawings—admittedly, done by physicians—medical drawings. What are we doing? This is not a medical school. This is not an ethical panel of a medicine school.

Senator KENNEDY, I thought, had a very important sentence in his prepared remarks. He said some Senators could be accused of practicing medicine without a license. That is not our job. I was not sent here to be a physician, to judge medical procedures, or to be God. That is for sure.

I also take great exception to certain things that were said in this debate. I want to put those right out there because this will be a long-heated argument. I just want to go on record. It will not make a bit of difference that I am particularly offended, but I want to put it on the record.

I want to say to my friends on the other side who are leading the charge for criminalizing a medical procedure, that doctors who perform abortions are doctors. They are not abortionists. They are physicians. Many of them have saved women's lives. And you call them abortionists?

Abortion is legal in this country. They are doctors who perform abortions. They are being harassed. They are being threatened. This kind of rhetoric on this floor adds to the problem.

Case in point: My colleague said Dr. So-and-so confessed that he performed abortions. He confessed. Notice the word. Who confesses? Somebody who is guilty of a crime. Abortion is not a crime in this Nation.

Yes, there are those who want to make it a crime. They want to put the women in jail. We will get to that another day, I assure you. If they win this one, that is coming down the road.

I say to my colleagues on the other side of this issue, do not use the term ''abortionist'' if you can help yourself. Say doctors who perform abortion. And do not say, he confessed. Then, my colleague said, He admitted.

Yes, you are right, this doctor did not come before the panel. Other doctors did. They defended this procedure, said it was the safest procedure, and said that other procedures were 14 times more dangerous for the woman.

Maybe you do not care about the woman. We do not see on that chart the face of the woman. Why is that? I say it is on purpose. It is a woman carrying a baby. I say the word ''baby.'' It is a woman carrying a baby who finds out in the late term some horrible thing she is faced with, with her family.

So do not talk about confessing, and do not talk about admitting.

I ask unanimous consent to have printed in the RECORD a letter from Dr. Haskell's attorney at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE CENTER FOR REPRODUCTIVE LAW & POLICY,

New York, NY.

Senator ORRIN G. HATCH,

Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: I am writing on behalf of Martin Haskell, M.D., whom I currently represent in litigation challenging Ohio House Bill 135, which like H.R. 1833, bans certain methods of abortion. Because of the pending litigation, Dr. Haskell must decline your kind invitation to testify before the Senate Judiciary Committee on Friday, November 17, 1995 about the federal ban on ''partial birth abortions.'' Nevertheless, he asked me to convey you his ardent opposition to the legislation, which will prevent him from providing safe and appropriate medical services to his patients needing second trimester abortions.

Unfortunately, over the last several years, Dr. Haskell has been the object of unlawful violence and intimidation by those who oppose abortion. In addition to physical harassment at home and work, which have included blockages and threats by abortion opponents, he has been the victim of a firebomb that extensively damaged one of his clinics. As a result, Dr. Haskell has recently refused public and media appearances that my increase the risk of violence against him.

While Dr. Haskell is mindful that his appearance before your Committee might clarify much of this misinformation currently circulating about his medical practice and about the purpose and effect of his legislation, he regrets that he will be unable to attend. Please feel free to contact me if I may be of further assistance to you.

Very truly yours,

KATHRYN KOLBERT,

Vice President.

Mrs. BOXER. In this, the attorney explains why the doctor did not come and references the fact that this doctor, unfortunately, has been the object of unlawful violence and intimidation by those who oppose abortion. In addition to physical harassment at home and at work, which have included blockades and threats by abortion opponents, he has been the victim of a firebomb that extensively damaged one of his clinics, and he has not made public appearances because there are some people who happen to love him.

So, please choose your words carefully here. It could have an impact well beyond your meaning.

I read the committee's hearing, the transcript, every word. I am very glad we had that hearing. It is not surprising, the doctors who testified were split on the issue. Some said it is not a necessary procedure. Others said it is quite necessary, it is the safest procedure. Some said we need to have that procedure to save a woman's life. Others said, ''We disagree.''

We do know one thing. The 35,000-member organization of the OB/GYN's, the obstetricians and gynecologists, say no to this bill. The experts, the legal experts are split on the constitutionality.

So, I say we need to look at the real-life people who have had this procedure because they come to us with a real story, not some philosophical point of view—and we all have them. As a matter of fact, one of these women who came before us describes herself as a conservative Republican pro-life person. Imagine. And that testimony cannot be derided by anyone in this Chamber, regardless of his or her view. Those people told the truth about their lives, and they were backed up by their families, and no one could contradict them.

That is the face that has been missing from this debate, the face that has been missing, the mother's face.

I was very glad that we had the hearing because this mother came out and told her story. I am going to show you a photograph of this woman and her family: Coreen Costello, of Agoura, CA, she is 31, a full-time wife and mother of two. Her husband Jim is 33. He is a chiropractor. Children: Chad 7, Carlin 5. She is now pregnant. She is in the third month of her pregnancy. I want you to keep that face in mind and the faces of this family in mind. I want to tell you about her and her story.

This is her statement. I am going to read it. It is brief. I want you to listen to the words and then I want you to think about what has been said here, the cruelty expressed toward the medical profession that took a Hippocratic oath to help a family like this.

Ms. COSTELLO. Senator Hatch, Senator Kennedy, and members of the committee, I would like to really thank you for allowing me to speak to you today. My name is Coreen Costello. I live in Agoura, California, with my husband, Jim; my son, Chad; and my daughter, Carlin. Jim is a chiropractor and I am a full-time wife and mother.

I am a registered Republican and very conservative. I do not believe in abortion. Because of my deeply held Christian beliefs, I knew that I would never have an abortion. Then on March 24th of this year when I was 7 months pregnant, I was having premature contractions and my husband and I rushed to the hospital.

During an ultrasound, the physician became very silent. Soon, more physicians came in. I knew in my heart that there was something terribly wrong. I went into the bathroom and I sobbed. I begged God to let my baby be okay. I prayed like I have never prayed before in my life. My husband reassured me that we could deal with whatever was wrong. We had talked about raising a child with disabilities. We were willing to take whatever God gave us. I had no problem with that.

My doctor arrived at 2:00 in the morning. He held my hand and informed me that they did not expect our baby to live. She was unable to absorb any amniotic fluid and it was puddling into my uterus. That was causing my contractions. This poor precious child had a lethal neurological disorder and had been unable to move for almost 2 months. The movements I had been feeling over the past months had been nothing more than bubbles and fluid.

Her chest cavity had been unable to rise and fall to stretch her lungs to prepare them for air. Therefore, they were left severely underdeveloped, almost to the point of not existing. Her vital organs were atrophying. Our darling little girl was dying.

A peri—peri—a specialist recommended terminating the pregnancy. This is not a medical school class, so I do not know the names of the specialties.

A perinatologist recommended terminating the pregnancy. For my husband and me, this was not an option. I chose to go into labor naturally. I wanted her to come on God's time. I did not want to interfere. It was so difficult to go home and be pregnant and go on with life knowing my baby was dying. I wanted to stay in bed. My husband looked at me and said, Coreen, this baby is still with us; she is still alive; let's be proud of her; let's make these last days of her life as special as possible. I felt her life inside of me and somehow I still glowed.

At this time, we chose our daughter's name. We named her Katherine Grace, Katherine meaning pure, Grace representing God's mercy. Then we had her baptized in utero. We went to many more experts over the next 2 weeks. It was discovered that Katherine's body was rigid and she was stuck in a transverse position. Due to swelling, her head was already larger than that of a full-term baby. Natural birth or induced labor were not possible; they were impossible.

I considered a Cesarean section, but experts at Cedars-Sinai Hospital were adamant that the risks to my health and possibly my life were too great. There was no reason to risk leaving my children motherless if there was no hope of saving Katherine. The doctors all agreed that our only option was the intact D&E procedure.

That is the procedure this bill will outlaw.

I was devastated. The thought of an abortion sent chills down my spine. I remember patting my tummy, promising my little girl that I would never let anyone hurt or devalue her.

After Dr. McMahon explained the procedure to us, I was so comforted. He and his staff understood the pain and anguish we were feeling. I realized I was in the right place. This was the safest way for me to deliver. This left open the possibility of more children, it greatly lowered the risk of my death, and most important to me, it offered a peaceful, painless passing for Katherine Grace.

When I was put under anesthesia, Katherine's heart stopped. She was able to pass away peacefully inside my womb, which was the most comfortable place for her to be. Even if regular birth or a Cesarean had been medically possible, my daughter would have died an agonizing death.

When I awoke a few hours later, she was brought in to us. She was beautiful. She was not missing any part of her brain. She had not been stabbed in the head with scissors. She looked peaceful. My husband and I held her tight and sobbed. We stayed with her for hours, praying and singing lullabies. Giving her back was the hardest moment of my life.

Due to the safety of this procedure, I am again pregnant now. Fortunately, most of you will never have to walk through the valley we have walked. It deeply saddens me that you are making a decision having never walked in our shoes.

When families like ours are given this kind of tragic news, the last people we want to seek advice from are politicians.

I am going to read it again.

When families like ours are given this kind of tragic news, the last people we want to seek advice from are politicians. We talk to our doctors, lots of doctors. We talk to our families and other loved ones, and we ponder long and hard into the night with God.

What happened to our family is heartbreaking and it is private, but we have chosen to share our story with you because we hope it will help you act with wisdom and compassion. I hope you can put aside your political differences, your positions on abortion, and your party affiliations and just try to remember us. We are the ones who know. We are the families that ache to hold our babies, to love them, to nurture them. We are the families who will forever have a hole in our hearts. We are the families that had to choose how our babies would die. Each one of you should be grateful that you and your families have not had to face such a choice. I pray that no one you love ever does.

Please put a stop to this terrible bill. Families like mine are counting on you. Thank you very much.

I say we need to look at the real-life people who have had this procedure. We have to put a mother's face on that drawing and into this debate because we know what will happen.

Some doctors say that this procedure is absolutely necessary to save a woman's life and protect her health. Others say no. What if the ones who say it is necessary are right? You know who is going to pay the price. Not the doctor, because he or she is going to stop doing this procedure. There is no exception in this bill for the life and health of the mother. There is an affirmative defense. That means the doctor has to go into court and defend himself or herself. The burden is on the physician to prove that he was acting or she was acting to save the woman's life and health. So the doctors will stop doing this procedure.

That is what this bill is all about. So who is left with fewer options? The women. It is like telling women—we have seen this—they had better not take a mammogram. We are going to say you do not really need it until you are 50. We faced that debate. Well, that is the only tool we have to save her life. And we fought against that recommendation, and we said to women who are 40 to go get those mammograms. Maybe we will only save 15 percent of you instead of a larger number when you are 50. But that is the only tool we have.

So when we take a tool away, who will be hurt? Not the doctor. It will be your wives. It will be your sisters. It will be your children and mine and their families.

We are over 90 percent men in this Senate. And I want to appeal to those men in this Senate who talk about the beauty of the baby going through the birth canal as if they have ever experienced this themselves. I take offense when you say you are the only ones who care about babies and you denigrate people on the other side and say that we will not talk about the babies. Well, I want to talk about the babies. And I want to talk about these babies who could have lost their mother, a pro-life Republican woman who came here to testify.

So what I am going to do during this debate is concentrate on putting a mother's face on the screen and putting her family's face on the screen, and tell her story because it has been left out of this debate. I plan to talk about the chamber of horrors a doctor would have to go through if he did feel that this was the only option—and when he took his Hippocratic oath, he said, to save the life of his patient—and if he feels that is the only procedure; the chamber of horrors that he would have to go through to protect a woman's health and even her life. I will lead you through what would happen to such a physician.

This is America. What are politicians doing in the hospital room? What are

politicians doing telling this religious woman how to lead her life and what to do? It is an outrage to me.

Roe v. Wade clearly says in late term the State shall regulate abortion, and here is a crowd who comes in here saying we are going to make welfare be run by the State. Fine. Medicaid by the States—we are going to have medical savings accounts. We are going to let Medicare ''wither on the vine,'' a well-known quote of NEWT GINGRICH. We do not need a Federal Government. But now all the doctors in here—as far as I know we only have one, and he was never an ob-gyn—are going to decide what procedure should be banned and what procedure should not be banned.

So I am going to put the face of the mother on this debate. I have many other stories we will tell in the course of time. I am going to take you through what happens to a physician—physicians most of whom who have brought thousands of babies into this world but may believe that this is the safest procedure to use so that this beautiful mother can get pregnant again and can stay alive for her husband and her children.

My colleagues, we have a lot of work to do. We do not even have a budget, and they are talking over there in the House about shutting the Government down again. Why do we not do what we are supposed to do? Why do we not stay out of things that are better left to the family? As she said, the last thing she wants is a politician involved in this tragedy. I think she wants us to do our job. Get a budget. Get a budget. Sit down around the table. Let us negotiate. Let us decide if Medicare and Medicaid are important. Let us decide if environmental protection and education are important. Let us decide how to balance this budget in 7 years with a touch of humanity. So, yes, babies and kids can get health care and can get an education.

That is what we are supposed to do. But, no. We are here with medical drawings. And do you want to know why people on the other side voted overwhelmingly for this bill? Because they never had a chance to amend it. We will give you that chance. We will give you the chance to show your support for States rights. We will give you that chance to stand up for the life and health of the mother.

This is a different place than the House where the Speaker controls the way things come to the floor. I know. I served there for 10 years. It is real difficult.

We have a chance. We have a chance to think about these women and their families and craft a bill that will not put people like this at risk.

Thank you very much, Mr. President. I yield the floor.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I rise in opposition to this legislation that I know is well intended. But I think it is wrong. Our colleague from California mentioned one witness. Let me read just a part of the testimony of another witness, Mrs. Viki Wilson.

Mr. President, I ask unanimous consent that her full statement be printed in the RECORD.

There being no objection, the material was order to be printed in the RECORD, as follows:

TESTIMONY OF VIKI WILSON TO THE SENATE JUDICIARY COMMITTEE IN OPPOSITION TO H.R. 1833/S. 939, NOVEMBER 17, 1995

I'd like to thank the Judiciary committee for allowing me to testify today. My name is Viki Wilson. I am a registered nurse, with eighteen years experience, ten in pediatrics. My husband Bill is an emergency room physician. We have three beautiful children: Jon is 10, Katie is 8, and Abigail is in heaven with God.

In the spring of 1994 I was pregnant and expecting my third child on Mother's Day. The nursery was ready and we were excited anticipating the arrival of our baby. Bill had delivered our other two children, and he was going to deliver Abigail. Jon was going to get to cut the cord and Katie was going to be the first to hold her. She had already become a very important part of our family.

At 36 weeks of pregnancy all of our dreams and happy expectations came crashing down around us. My doctor ordered an ultrasound that detected what all my previous prenatal testing, including a chorionic villus sampling, an alphafetoprotein and an earlier ultrasound had failed to detect, an encephalocoele. Approximately 2/3 of my daughter's brain had formed on the outside of her skull. I literally fell to my knees from the shock. I immediately knew that she would not be able to survive outside by womb. My doctor sent me to a perinatologist, a pediatric radiologist and a geneticist all desperately trying to find a way to save her. My husband and I were praying that there would be some new surgical technique to fix her brain. But all the experts concurred. Abigail would not survive outside my womb. And she could not survive the birthing process, because of the size of her anomaly her head would be crushed and she would suffocate. Because of the size of her anomaly, the doctors also feared that my uterus would rupture in the birthing process most likely rendering me sterile. It was also discovered that what I thought were big healthy strong baby movements were in fact seizures. They were being caused by compression of the encephalocoele that continued to increase as she continued to grow inside my womb. I asked, ''What about a c-section?'' Sadly, my doctor told me ''Viki, we do c-sections to save babies. We can't save her. A c-section is dangerous for you and I can't justify those risks.

The biggest question for me and my husband was not ''Is she going to die?'' A higher power had already decided that for us. The question now was ''How is she going to die?'' We wanted to help her leave this world as painlessly and peacefully as possible, and in a way that protected my life and health and allowed us to try again to have children. We agonized over these options, and kept praying for a miracle. After discussing our situation extensively, our doctors referred us to Dr. McMahon. It was during our drive to Los Angeles that we chose our daughter's name. We named her Abigail, the name my grandmother had always wanted for a grandchild. We decided that if she were named Abigail, her great-grandma would be able to recognize her in heaven.

My husband grilled Dr. McMahon with all the same questions that many of you probably have asked about the procedure. We would never have let anything happen to our baby that was cruel, or unnecessary . . . and Bill as my husband, loving me, wanted to be sure it was safe for me.

Dr. McMahon and this procedure were our salvation. My daughter died with dignity inside my womb. She was not stabbed in the back of the head with scissors, no one dragged her out half alive and then killed her, we would never have allowed that to happen.

Losing Abigail was the hardest thing that's ever happened to us in our life. After we went home, I went into the nursery and sat there holding her baby clothes crying and thinking she'll never get to hear me tell her that I love her.

I've often wondered why this had happened to us, what we had done to deserve such pain. I am a practicing Catholic, and I couldn't help believing that God had to have some reason for giving us such a burden. Then I found out about this legislation, and I know then and there that Abigail's life had a special meaning. God knew I would be strong enough to come here and tell you our story, to try to stop this legislation from passing and causing incredible devastation for other families like ours. There will be families in the future faced with this tragedy because pre-natal testing is not infallible. I urge you, please don't take away the safest procedure available.

I told the Monsignor at my parish that I was coming here, and he supports me. He said, ''Viki, what happened to you wasn't about choice. You didn't have a choice. What you did was about preserving your life.'' I was grateful for his words. This issue isn't about choice, it's about a medical necessity. It's about life and health.

My kids attend a Catholic school where a playground was built and named in Abigail's honor. I believe that God gave me the intelligence to make my own decisions knowing I'm the one that has to live with the consequences. My husband said to me as I was getting on the plane to come to Washington ''Viki, make sure this Congress realizes this is truly a Cruelty to Families Act.''

Mr. SIMON. Mr. President, here is what she said.

My name is Viki Wilson. I am a registered nurse with eighteen years experience, ten in pediatrics. My husband Bill is an emergency room physician. We have three beautiful children. Jon is 10. Katie is 8, and Abigail is in heaven with God.

At 36 weeks of pregnancy all of our dreams and happy expectations came crashing down around us. . . . . Approximately 2/3 of my daughter's brain had formed on the outside of her skull. I literally fell to my knees from shock [when told about this by the doctor]. I immediately knew that she would not be able to survive outside my womb. . . . My husband and I were praying that there would be some new surgical technique to fix her brain. But all the experts concurred. Abigail would NOT survive outside my womb. And she could not survive the birthing process. Because of the size of her anomaly her head would be crushed and she would suffocate. Because of the size of her anomaly, the doctors also feared that my uterus would rupture in the birthing process most likely rendering me sterile. It was also discovered that what I thought were big, healthy, strong baby movements were in fact seizures.

. . . My daughter died with dignity inside my womb. She was not stabbed in the back of the head with scissors. No one dragged her out half alive and then killed her. We would never have allowed that to happen.

Losing Abigail was the hardest thing that's ever happened to us in our life. After we

went home, I went into the nursery and sat there holding her baby clothes crying and thinking she'll never get to hear me tell her that I love her.

I've often wondered why this had happened to us, what we had done to deserve such pain. I am a practicing Catholic. I couldn't help believing that God had to have some reason for giving us such a burden. Then I found out about this legislation, and I knew then and there that Abigail's life had a special meaning. God knew I would be strong enough to come here and tell you our story, to try to stop this legislation from passing and causing incredible devastation for other families like ours.

. . . My kids attend a Catholic school where a playground was built and named in Abigail's honor. I believe that God gave me the intelligence to make my own decisions knowing I'm the one that has to live with the consequences. My husband said to me as I was getting on the plane to come to Washington, ''Viki, make sure this Congress realizes this is truly a Cruelty to Families Act.''

What we are asked to do in this legislation is to say to the physicians that helped Viki Wilson and Coreen Costello and their families, if you assist these families, you will go to prison for 2 years.

That is a decision we should not make.

In the hearing, I said to the one physician who testified against this bill, who incidentally served 11 years as a missionary in Korea, who now is on the faculty at Johns Hopkins, I have been thinking about it, done exactly 30 minutes of research, and maybe we should—because a brain tumor is a life and death matter, just as this is a life and death matter—maybe we should introduce legislation that says what kind of brain tumor surgery physicians can perform. And I said to him, what do you think about that? He said, of course, it would be a terrible idea. And he followed through because he recognized the analogy that I was making.

For the first time in the history of the United States, if this is adopted, we will be saying to physicians, this is what you have to do; these are the procedures you have to follow.

I frankly have no ability to make that decision.

I wrote to the departments of obstetrics and gynecology of the medical schools in Illinois and asked the people who were in charge what they thought of this legislation. I enclosed a copy of the legislation, and I asked three questions.

I ask unanimous consent that all of these letters be printed in the RECORD, Mr. President.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

THE UNIVERSITY OF CHICAGO, DEPARTMENT OF OBSTETRICS AND GYNECOLOGY, THE CHICAGO LYING-IN HOSPITAL,

Chicago, IL, November 14, 1995.

Hon. PAUL SIMON,
U.S. Senator, U.S. Senate, Dirksen Building, Washington, DC.

DEAR SENATOR SIMON: Thank you very much for your letter of November 9 regarding H.R. 1833, the ''Partial-Birth Abortion'' bill. I shall address your questions in order.

1. The term ''partial birth abortion'' appears in the bill to be a loosely defined entity and that makes interpretation difficult. There is a procedure known as ''Dilatation and Evacuation'' (D & E) which is done to interrupt late second trimester pregnancies. Presumably this medically acceptable procedure is not being addressed in the bill, but the language is sufficiently vague that I cannot be certain. Unquestionably, that procedure should never be outlawed. I believe there have been rare instances in which some physicians have done early third trimester interruption of pregnancy, presumably for late-discovered lethal or serious genetic defects, but I am not familiar with this procedure. However, I assume these are done for medically appropriate reasons.

2. I am strongly opposed and extremely concerned about the Federal Government deciding the acceptability of medical procedures in practice. These should be decided based on medical information and not by a legislative process. It appears ironic to me that the current emphasis in Washington is to reduce the Federal Government's involvement in our lives. The proposed legislation goes alarmingly in the opposite direction.

3. A physician should obviously practice medicine ethically and legally. I oppose the notion that criminal or civil penalties be introduced into the practice of medicine in the United States.

Thank you very much for the opportunity to comment on these issues. Please do not hesitate to contact me again, should you desire.

Sincerely yours,

ARTHUR L. HERBST, M.D.

WASHINGTON UNIVERSITY SCHOOL OF MEDICINE AT WASHINGTON UNIVERSITY MEDICAL CENTER, DEPARTMENT OF OBSTETRICS AND GYNECOLOGY,

St. Louis, MO, November 22, 1995.

Hon. PAUL SIMON,
U.S. Senate, Dirksen Building, Washington, DC.

DEAR SENATOR SIMON: Thank you very much for your letter of November 9, 1995, concerning the legislation H.R. 1833. I will attempt to answer the questions as you have posed them.

One, I am familiar with the procedure, even though I have never performed it myself. I do not agree with those who support the bill. There are instances in which I think that this procedure is appropriate. Two specific instances come to mind. One would be when the life of the woman is in danger and the most expeditious delivery of the fetus would be the safest method for her. This method allows for that, since the fetus can be delivered through a partially dilated cervix. The other instance would be a fetus that is doomed to die after delivery or has a series of severe malformations. Examples of this would be fetuses that have no lungs or no kidneys. Again, this technique of abortion can be safest for the mother because it can be performed when the cervix is not fully dilated. I believe it is cruel to force a woman to carry a fetus to term when she knows that the baby will die after delivery. One can imagine the psychological distress that a woman would have when she is obviously pregnant and people continuously inquire how she and the baby are doing. Imagine having either to hide the problems of the fetus or to not tell the inquiring person. Many times, the inquiries to the pregnant woman are simply part of a normal conversation between persons, but a woman who is carrying a fetus doomed to die would find this a very stressful situation. The instance in which this procedure would be useful is when the discovery is made after 20-22 weeks of pregnancy. It can become the safest procedure for the mother. I must also add that I find it appropriate to perform this procedure when the mother and fetus are both normal. I personally would never do that, and I would have difficulty watching such a procedure being performed on a normal fetus as an elective termination.

In answer to your second question, I have great worries about the federal government having a say on what medical procedures can and cannot be performed. This procedure is an excellent example of why I think the federal government would have problems directing the care of individual patients. There are so many possibilities concerning threats to the pregnant woman's life or fetal malformations that may or may not lead to problems in the future. This also becomes even more complicated because the state of medical art is continually changing and what would be a threat to a woman's life one year might cease to be one in future years, as medical technologies improve. I believe that the federal government is simply too cumbersome to micro-manage the care of individual patients by individual physicians.

In answer to your third question, I have worries about the imposition by Congress of criminal and civil penalties on doctors performing certain medical procedures. It really is tied to the answer to the second question, in that this is a complex area and it is difficult to micro-manage from a distance. I must say that I am very troubled by Section (e) on page 3 of the bill. Physicians would find very little comfort from the fact that ''it is an affirmative defense to a prosecution or a civil action under this section, which must be proved by a preponderance of evidence, that the partial-birth abortion was performed by a physician who reasonably believed the partial-birth abortion was necessary to save the life of the mother; and no other procedure would suffice for that purpose.'' Very few physicians would risk prolonged civil or criminal proceedings, particularly in an area that is so charged as abortion. The other problem with this is that it is absolute in that no other procedure would suffice for that purpose. It would be difficult in any clinical situation to come to the conclusion the only one procedure would suffice.

My greatest problem with this legislation is that we could so frighten physicians that the best procedure for the pregnant woman would be precluded by the legislation. We physicians always wish to place the welfare of our patients first, and bills such as this would make us weigh what we believe to be best for patients against protection for ourselves. I, as a physician, would like never to be put in such a position. The welfare of the patient should always come first.

I hope that my thoughts have been helpful to you, and I appreciate it very much and am indeed honored that you would seek my thoughts on this important and controversial issue. If I can be of further help to you, please feel free to contact me about this or any other medical issue concerned with Obstetrics and Gyncelogy.

Sincerely,

JAMES R. SCHREIBER, M.D.,
PROFESSOR AND HEAD,
Obstetrics and Gynecology.

ROCKFORD HEALTH SYSTEM,
ROCKFORD MEMORIAL HOSPITAL,

Rockford, IL, November 14, 1995.

Hon. PAUL SIMON,
U.S. Senator, Dirksen Building, Washington, DC.

DEAR SENATOR SIMON: This letter is a response to your inquiry of November 9, 1995, regarding Bill H.R. 1833 which is to be discussed on November 17, 1995. You raised three issues concerning the legislation and the procedure which I will attempt to respond to.

Although I am not an obstetrician, I am somewhat familiar with the procedure. The procedure that is performed is generally done somewhat differently than described in the Bill that was attached to your letter. The procedure apparently is rarely done and is not done at all at this institution. However, there are solid medical indications for doing this procedure when it is deemed safer to perform this than an operative procedure to remove the fetus either if it is non-viable or the mother's life is in danger. Abortions are not performed at this institution for a variety of reasons. Therefore, the outcome of this legislation will have very little impact at this level.

You did raise the question about how I feel about the federal government having a say in what medical procedures can and cannot be performed. I, as my colleagues do, feel quite strongly that the role of the government should not stray into the medical arena regarding what is appropriate or non-appropriate therapy. As you know, all of the ramifications from legislating at this level simply cannot be understood or realized prior to the event and the results may be completely different than those intended. Determining which medical procedures should and should not be done should lie within the confines of the institution performing these procedures. This should be decided by sound medical judgement and where appropriate, the ethical and moral considerations will be discussed at a local level with the Ethics Committee.

In a similar vein, I feel that Congress imposing criminal and civil penalties upon physicians performing medical procedures borders on the ridiculous. If Congress begins to legislate at this level, where can it possibly end?

I hope these comments are of help, and if I can be of any further assistance, please do not hesitate to ask me.

Sincerely,

DONALD E. MCCANSE, M.D.,
Vice-President, Medical Affairs.

EVANSTON HOSPITAL CORP.,
DEPARTMENT OF OBSTETRICS AND GYNECOLOGY,
Evanston, IL, November 13, 1995.

Hon. PAUL SIMON,
Dirksen Building,
Washington, DC.

DEAR SENATOR SIMON: In response to your letter of November 9th, I offer the following comments to your questions:

(1) Yes I am familiar with the procedure described in legislation, HR 1833, but have not seen or done one. We do not perform this procedure at this institution. In proper hands (i.e. qualified physician) the procedure does have a place in the armamentarium of termination procedures.

(2) The basic question is, does the federal government have a place in deciding what medical procedures should or should not be performed. I feel strongly not. This is a medical decision.

(3) Similarly, Congress has no business imposing penalties on physicians for performing a certain procedure. If any government sanction would be appropriate, it might be at the State Department of Professional Regulation.

The overall issue of freedom of choice in pregnancy termination should not be clouded or interfered with by dictation of how the termination is performed.

I appreciate the opportunity to provide input into this important matter and thank you for asking for my opinion.

Respectfully,

DAVID W. CROMER, M.D.

MICHAEL REESE HOSPITAL AND MEDICAL CENTER, DEPARTMENT OF OBSTETRICS AND GYNECOLOGY,
Chicago, IL, November 21, 1995.

Hon. PAUL SIMON,
U.S. Senate, Dirksen Building, Washington, DC.

DEAR SENATOR SIMON: I am an Associate Professor of Clinical Obstetrics and Gynecology at the University of Illinois and currently in active practice of Maternal Fetal Medicine or ''high risk'' obstetrics at both Michael Reese Hospital and the University of Illinois Hospital. Therefore, the issue at hand has great importance to me and to the patients for whom I provide care.

I would like to answer your questions by telling you that I am unfamiliar with the term ''Partial Birth Abortion.'' After reading about it from descriptions in the press, I do not find that it results in an outcome that is any different from other techniques of abortion and, therefore, since abortion is a legal procedure, I have no objection to it. I feel very strongly that the federal government should not have a say in defining which medical procedures should be performed. I also believe that the Congress should not impose criminal and additional civil penalties on doctors because they perform one medical procedure and not another to accomplish the same outcome for their patient.

Prior to discussion of H.R. 1833, I was unaware of the term ''Partial Birth Abortion.'' It is neither a term found in the ICD–9 catalog of medical diagnoses or medical procedures published by the American Medical Association nor can it be found in any medical text book with which I am familiar. After reviewing statements that have appeared in the press, I understand that the term has been used to describe one of several techniques that obstetric surgeons have used to accomplish an abortion by enlargement of the opening of the cervix or mouth of the womb (dilation) and removal of the fetus (evacuation). Dilation and evacuation (D&E), the accepted terminology, is used to perform an abortion after the first thirteen weeks (first trimester) of pregnancy. While many physicians perform abortions and have been required to be trained to do that procedure by the American Board of Obstetrics and Gynecology, only a few physicians perform D&E for which they have received additional training.

I present the option for D&E when I find, through the use of ultrasound and other prenatal diagnostic procedures, that the patient is carrying a fetus with severe congenital or chromosomal anomalies. These abnormalities would leave the fetus with severe structural or intellectual deficits, often being incompatible with life after birth. Since these diagnoses cannot be made until after the first trimester of gestation, the patients who have chosen to end their pregnancy require termination either by D&E or by induction of premature labor. The latter procedure requires agents to soften the cervix of the womb and then use of additional medication to cause uterine contractions which expel the fetus.

There are only two physicians of whom I am aware in the Chicago area who perform D&E on patients beyond 20 weeks gestation. I do not know if they at times use the technique of D&E referred to as ''Partial Birth Abortion.'' Most often D&E results in destruction of the fetus; however, one physician to whom I send patients is adept at surgically removing a fetus of late gestation (24 weeks or less) either intact or with only minimal distortion. This has great benefit for the patient because we are able to perform an autopsy on the fetus and confirm any of the suspected abnormalities for which the patient was referred. This information might have an influence on the patient's future childbearing since genetic patterns of inheritance may be identified. It also may provide the mother with an opportunity to see and hold this fetus if she wishes. This brief contact may help her with mourning and ease the burden of losing a pregnancy.

You have asked if I ''share the sense of those who support the bill that this procedure should not be allowed under any circumstance?'' I read the bill and found the definition of a ''Partial Birth Abortion'' contained within it extremely vague. Since this is not a medical term with which I am familiar and the description in the legislation lacks exactness, I cannot give you an answer.

I have another sense of the issue from reading accounts of the procedure in the press and understand that the term has been used to describe a D&E whereby the cervix is partially dilated and extraction of a fetus is performed by pulling down on the legs until the fetal head is just above the open cervix. Since the fetal head is larger that its chest, it does not pass through. An instrument is then used to compress the fetal head so that it can then be delivered without further opening of the cervix. It is unlikely that manipulation of the fetal skull takes place on a fetus that is alive since the umbilical cord which is attached to the fetal abdomen below the cervix and the placenta above has been compressed between the tight cervix and the fetal head resulting in fetal death prior to head decompression. It is true that this entire procedure results in fetal death, but how does this method differ from any of the other techniques of abortion? If abortion is allowed, this technique should not be singled out as being any different than any other technique that achieves the same end.

In fact, D&E may be more desirable as an abortion procedure in that it takes only about 30 minutes to perform; less time to accomplish than the 9 to 12 hours required for induction of labor. This is an advantage to the mother since there is less chance for blood loss and infection. In the past, the Center for Disease Control in Atlanta, Georgia found D&E to be the safest technique for abortion after the first trimester. With particular reference to a D&E where compression of the fetal head is performed, one can hypothesize that there is less trauma to the mother's cervix from further opening which would be required to deliver the fetal head without decompression. Greater trauma to the cervix has been implicated as a cause of an ''incompetent cervix'' which results in repeated pregnancy loss. I mentioned above the advantages of retrieving an intact specimen for pathologic diagnosis and also in some cases the possibility of helping the mother with the process of mourning.

I feel very strongly that the federal government should not have a say in the type of medical procedures performed by a physician. The advantages of one treatment plan, either medical or surgical, must be left to the process of peer review. It is only by this method that those procedures which have the greatest benefit and carry the least risk to the patient can be identified. Medicine is a discipline founded upon scientific principles and these principles would be superseded if government intervened.

I feel equally as strong about Congress imposing criminal and additional civil penalties upon doctors because of a certain procedure that he or she performs. If the goal of the procedure is to accomplish an end that is within the law, how can Congress possibly call one procedure legal and another illegal? The value of the procedure must be determined by the medical community who can best judge its merit by its risk and benefit to the patient. If the procedure endangers the patient, the medical community, through

the process of peer review, will prohibit that procedure from being performed. Physicians who perform procedures outside of the standard of care can and do face civil and, even at times, criminal penalties; but, the issue does not have to do with the procedure they perform, it concerns the adherence to the standard of care.

I hope my response has been of help. As I have indicated, the term ''Partial Birth Abortion'' is not a medical term with which I am familiar. If abortion is legal, I favor the technique that will accomplish the goal with the least risk and the greatest benefit to the mother. I feel strongly that the federal government cannot decide the scientific merit of one medical procedure over another and, therefore, should not have jurisdiction over which medical procedures should or should not be performed. Congress certainly should not impose civil or criminal penalties on a physician for performing one or another procedure.

I am most grateful to have the opportunity to respond to this issue.

Cordially,

LAURENCE I. BURD, MD
Associate Professor, Clinical Obstetrics & Gynecology.

THE UNIVERSITY OF ILLINOIS AT CHICAGO, DEPARTMENT OF OBSTETRICS AND GYNECOLOGY (M/C 808) COLLEGE OF MEDICINE,
Chicago, IL, November 20, 1995.

Hon. PAUL SIMON,
U.S. Senate, Dirksen Building, Washington, DC.

DEAR MR. SIMON: I regret to have been unable to answer your recent letter sooner but I was away and only today on my return in the office, I found your letter.

I am still responding to your request just in case in view of a budget impasse, the hearings of your committee have been held as yet. Thus, I hope that this letter may be helpful to you and your committee.

As to the issues raised in your letter regarding ''Partial Birth Abortion, yes I am familiar with the procedure. Such procedures are used very rarely and its proposed prohibition is a thinly disguised assault on the women's reproductive freedom and the physician's freedom in his or her profession. Such a proposed legislation would be injurious to women's health.

I vividly recall a patient many years ago who presented herself to the labor room in premature labor, infected, sick with high fever, and with her premature fetus partially expelled in the vagina through an incompletely dilated cervix. After administration of antibiotics, the baby had to be delivered as rapidly as possible of this clearly now viable fetus. Thus, a head decompression measure such as the one described in the partial-birth abortion bill was used. In addition, the baby turned out to be hydrocephalic. If the proposed legislation was in effect, not allowing this procedure under any circumstances, the woman would have had to be exposed to a Cesarean Section for a non-viable fetus. The invasive operative objective abdominal delivery would have increased significantly for risk of spreading infection, affecting her future fertility and perhaps compromising her life. The democratic system of this Country expressed through our federal government in its three branches, has permitted the realization of a society that, if certainly not perfect, is clearly admired by most nations in the World. However, it is clearly inappropriate and dangerous for the federal government to try to regulate the practice of medicine. Professionals must be permitted to use their judgment on what is best in the care of the individual patients rather than fitting everyone in a procrustean bed made in Washington! Imposing criminal and civil penalties on doctors performing a medical procedure would have clearly a chilling effect on the performance of any procedure, even when ''the physician reasonably believed that the procedure was necessary to save the life of the mother and no other procedure would suffice.'' The law would clearly expose the physician's judgment to second guessing by others whose opinions may be colored by ethical standards not universally shared. This legislative approach has no place in a pluralistic society such as ours and it may result in health damage to many women among our citizens.

Again, I apologize for the lateness in my response and hope that this letter is useful for you and the committee in which you serve.

Sincerely yours,

ANTONIO SCOMMEGNA, MD.

COOK COUNTY HOSPITAL, DEPARTMENT OF OBSTETRICS AND GYNECOLOGY
Chicago, IL, November 21, 1995.

Hon. SENATOR PAUL SIMON,
Dirksen Building,
Washington, DC.

DEAR SENATOR SIMON: Thank you very much for asking me to comment on H.R. 1833, the bill which address vaginal delivery of late abortions. I am sorry that I was out of the office last week and could not answer your letter in an appropriate time and hope that this will not deter you from asking my thoughts on future issues.

To answer your specific questions:

1. Yes, as you can see I am familiar with the procedure. The issue of the vaginal extraction of late second trimester abortions is an important one, and an issue that cannot, because of its social, religious, and philosophical implications be considered solely on the basis of its medical justification. If we were to only judge the procedure on its medical merits and compared it to other methods of late second trimester abortion, it would be judged the safest method for the mother when carried out by an experienced operator. It is not however, an esthetically ''clean'' procedure, and not one that a caring physician would do except in the most demanding medically indicated situation. I do not agree with those who supported this bill that the procedure should not be allowed under any circumstance.

2. How do I feel about the federal government having a say in what medical procedure can and cannot be preformed? I feel that they should not dictate medical care and should not intervene between a person seeking medical care and the practitioner prescribing that care. Intervention of this type, in which a particular procedure is chosen to solve a medical problem, can only escalate to other procedures and situations that others find morally or religiously objectionable. There are many in this country who find male circumcision reprehensible, should we ban those also?

3. My thoughts on imposing criminal and additional civil penalties on doctors performing a medical procedure? Doctors performing procedures that are medically indicated, carried out without complication, and to the satisfaction of the patient and or their families, should not be subjected to criminal or civil penalties. The tort system, although decidedly not perfect, imposes strict penalties on physicians performing legal procedures in less than a satisfactory manner.

Senator Simon, you can see that I do feel strongly about government intervention between patient and physician. It simply should not occur. Thank you again for asking for my opinions and thoughts regarding H.R. 1833.

Sincerely yours,

DONALD M. SHERLINE, M.D.,
Chairman.

Mr. SIMON. Let me read just a few paragraphs from some of the letters. Dr. Arthur Herbst, who is the chairman of the department at the University of Chicago:

I am strongly opposed and extremely concerned about the Federal Government deciding the acceptability of medical procedures in practice. These should be decided based on medical information and not by a legislative process. It appears ironic to me that the current emphasis in Washington is to reduce the Federal Government's involvement in our lives. The proposed legislation goes alarmingly in the opposite direction.

The chair of the department of obstetrics and gynecology at Washington University in St. Louis, just across the border from Illinois, Dr. James R. Schreiber:

In answer to your second question, I have great worries about the federal government having a say on what medical procedures can and cannot be performed. This procedure is an excellent example of why I think the federal government would have problems directing the care of individual patients. There are so many possibilities concerning threats to the woman's life . . .

My greatest problem with this legislation is that we could so frighten physicians that the best procedure for the pregnant woman would be precluded by the legislation.

The vice president for medical affairs of the Rockford Health System, which is affiliated with the University of Illinois Medical School, writes:

You did raise the question about how I feel about the federal government having a say in what medical procedures can and cannot be performed. I, as my colleagues do, feel quite strongly that the role of the government should not stray into the medical arena regarding what is appropriate or nonappropriate therapy. As you know, all of the ramifications from legislating at this level simply cannot be understood or realized prior to the event and the results may be completely different from those intended.

. . . I feel that Congress imposing criminal and civil penalties upon physicians performing medical procedures borders on the ridiculous. If Congress begins to legislate at this level, where can it possibly end?

Dr. David Cromer, of Evanston Hospital, which is affiliated with Northwestern University's Medical School, writes:

The basic question is, does the federal government have a place in deciding what medical procedures should or should not be performed. I feel strongly not. This is a medical decision.

Similarly, Congress has no business imposing penalties on physicians for performing a certain procedure.

The head of the department of obstetrics and gynecology at Michael Reese Hospital, which is affiliated with the University of Illinois College of Medicine, writes:

You have asked if I ''share the sense of those who support the bill that this procedure should not be allowed under any circumstance?'' I read the bill and found the definition of a ''Partial Birth Abortion'' contained within it extremely vague. Since this is not a medical term with which I am familiar and the description in the legislation lacks exactness, I cannot give you an answer.

. . . I feel very strongly that the federal government should not have a say in the

type of medical procedures performed by a physician.

. . . I feel equally as strong about Congress imposing criminal and additional civil penalties upon doctors because of a certain procedure that he or she performs.

Dr. Antonio Scommegna heads the department of obstetrics and gynecology at the University of Illinois at Chicago:

As to the issues raised in your letter regarding Partial Birth Abortion, yes I am familiar with the procedure. Such procedures are used very rarely and its proposed prohibition is a thinly disguised assault on the women's reproductive freedom and the physician's freedom in his or her profession. Such a proposed legislation would be injurious to women's health.

And a very similar letter from Dr. Donald M. Sherline, who heads that department at Cook County Hospital, which is a huge hospital in Chicago.

I think, Mr. President, that what we have here is something that is well-intended. I do not question the motivation of my colleague from New Hampshire. I would ask every Member of this body to read the testimony of these two women who testified before the Judiciary Committee. Anyone who reads that testimony and believes we should deny these women their right to safe health and put the physicians who give them their health and save their lives, put them in prison for 2 years, I think you have a hard heart indeed. At least I do not have the courage to say to those families, ''We're not going to let you protect yourselves.''

I think this is an example of the Federal Government running amok. If this passes—and I know politically maybe it is going to pass tomorrow—I trust that the President of the United States has the courage to veto this legislation and that we will protect the families of America from this political interference.

Mr. HATCH. Mr. President, I rise to address one aspect of the debate over the partial-birth abortion bill: the argument that the bill is unconstitutional.

Opponents of this bill raise arguments challenging its constitutionality that, I believe, reflect a fundamental misunderstanding of constitutional principles and of the Supreme Court's abortion jurisprudence. This is not only my view, but the view of numerous respected constitutional scholars at our Nation's finest law schools, such as, just to name a few, Michael McConnell, the Graham professor of law at the University of Chicago, and Douglas Kmiec of the Notre Dame Law School, and of other authorities on constitutional law, such as William Barr, former Attorney General of the United States. I believe that H.R. 1833 is constitutional.

Because of the timing in the birth process in which these abortions occur, these fetuses may actually qualify as persons under the Constitution. As such, they are entitled to all of the protections of the law that all other American citizens receive under the Bill of Rights, particularly the 5th and the 14th amendments to the Constitution.

This bill only applies to fetuses which are partially delivered. As such these partially born fetuses do not fall under the framework of Roe versus Wade and Planned Parenthood versus Casey, which apply only to the unborn.

Although State laws on homicide and infanticide generally protect only fully born children, at least 36 States allow recovery under wrongful death statutes for postviability prenatal injuries that cause stillbirth, and another one-third of the States consider killing an unborn child, other than through an abortion, as some form of homicide.

Given these statutes, some States logically have promulgated laws that protect children in the process of being born, such as Texas and California. In light of this existing law, as Professor Kmiec, a former Assistant Attorney General for the Office of Legal Counsel, testified before the Judiciary Committee, it is entirely appropriate for Congress to pass a statute protecting such partially born children to clarify their status under the Constitution.

Opponents of this bill would have us believe that 3 inches and 3 seconds can make all the difference. In other words, they would have us believe that a living infant, capable of life outside the mother's womb, and actually in the process of birth, is not a person, entitled to the full panoply of constitutional protections and rights, because it is 3 inches and 3 seconds from birth. Would the Constitution fail to protect a fetus 2 inches and 2 seconds from life? One second and one inch?

Even if one believes that these children qualify as unborn, the Supreme Court's jurisprudence on abortion, principally articulated in Planned Parenthood versus Casey, fully permits Congress to pass this ban on partial-birth abortion. In Casey, the Court, speaking through a three-Justice plurality, Justices O'Connor, Kennedy, and Souter, tossed out Roe versus Wade's trimester framework and articulated three principles to guide courts in abortion cases. First, the woman has a right to terminate her pregnancy before fetal viability.—*Casey*, 112 S.Ct. at 2804.

Second, the interest of the State in promoting prenatal life permits the State to regulate, and even prohibit, abortions after fetal viability, subject to exceptions for the life or health of the mother.

Third, the State has legitimate interests throughout pregnancy in protecting the health of the mother and the life of the fetus.

Under this framework, this bill is constitutional because it only prohibits the abortion of living, viable fetuses, and only by one abortion procedure.

The medical testimony we heard in the Judiciary Committee indicated that about two-thirds of the fetuses aborted in this manner are alive, and that this procedure is generally used largely, if not exclusively, during the period of viability.

Further, H.R. 1833 is limited only to abortions in which a living fetus is partially delivered and then killed. The Casey right to a an abortion before viability is not implicated in this bill, because the bill exempts the abortion of nonviable fetuses and applies only to abortions after viability.

Opponents of the bill reduce our great Constitution to trivialities if they argue that the Constitution guarantees a right to a specific abortion procedure.

Nor does this bill somehow impose an undue burden upon the right to abortion, the test adopted by the three-Justice plurality which, I might add, is not the law of the Supreme Court until it receives a majority.

As Prof. Michael McConnell has written in a November 29, 1995, letter to the Judiciary Committee:

Since this bill would ban only one method of abortion—one that, according to testimony by medical experts, is quite rare—it seems evident that it meets this standard. It can hardly be an ''undue burden'' to require abortionists to conform to standard and accepted medical practice.

Although the undue burden standard is rather unclear, it is still difficult, if not illogical, to conclude that prohibiting one method of abortion, infrequently used, will interpose a ''substantial obstacle in the path of a woman seeking an abortion.''—112 S.Ct. at 2820.

Women seeking abortions previability still may resort to D&C and D&E procedures, which account for most abortions in this country. And, of course, women will have available the other methods of postviability abortion, which our hearings have shown are safer and more widely used.

The Justice Department and the bill's opponents have espoused two main criticisms of the bill.

First, they claim that the bill must have an explicit exception for abortions performed to preserve the health of the mother, which it currently does not have.

Second, they claim that the bill's provision for an exception for the life of the mother is unconstitutional because it is structured only as an affirmative defense.

Both arguments are, in the words of former Attorney General William Barr, meritless.

I will respond to them in turn, but let me note that legal experts of the highest reputation and credentials find these objections to be unconvincing and unsuccessful.

Let me take up the fist argument. In Casey, the Court rejected the trimester framework in favor of a bifurcated approach based on fetal viability, while reaffirming the core holding of Roe.

According to the Supreme Court, after the fetus becomes viable, the Government can prohibit abortion except in cases where the life or health of the mother is threatened.

This bill does not threaten a woman's right to have an abortion, nor does it threaten a woman's life or safety, because it leaves open alternative methods of abortion both before and after viability—methods which the top experts in the field have testified are safer than Dr. Haskell's method.

By banning this rogue method, we actually enhance the woman's safety, not injure it.

I think it is worth quoting the experts on this point, due to the great weight that opponents of this bill have placed on this weak argument.

As Professor Kmiec testified before the Judiciary Committee:

> The bill by its focussed, targeted structure implicitly provides for the health of the mother by not banning all abortion procedures at this later stage of the pregnancy, but only the one seen as patently and inhumanely offensive.

As Professor McConnell of Chicago concludes:

> In light of authoritative medical testimony that partial birth abortions are not necessary for preservation of the mother's health, the bill could not be invalidated on that ground.

According to Former Attorney General Barr:

> Congress could reasonably conclude from the record that the partial-birth abortion procedure is not safer for a mother's health than other available—and well-established—alternatives. It would therefore be pointless to include a health exception in H.R. 1833 because this exception could not be legitimately invoked.

It seems clear that a written exception for the health of the mother need be included only if Congress attempted to ban all postviability abortions, not just this single, rare, offensive method of killing partially born children.

The Supreme Court has recognized many legitimate interests that may justify abortion statutes such as the one before the Senate:

First, safeguarding health, maintaining medical standards, and in protecting potential life;

Second, protecting immature minors, promoting general health, promoting family integrity, and encouraging childbirth over abortion;

Third, protecting human life, protecting the dignity of human life, preventing both moral and legal confusion over the role of physicians in our society, and

Fourth, preventing cruel and inhumane treatment.

Clearly, this bill furthers these interests—recognized as constitutional by the Supreme Court.

The Clinton administration argues that this bill would force an increased medical risk on women, and hence would violate the Constitution.

The administration relies upon two cases, Thornburg versus American College of Obstetricians and Gynecologists, and Planned Parenthood versus Danforth, for the proposition that any State regulation of abortion that might increase the medical risk to the woman is unconstitutional.

First, the factual basis for this argument is absent because there is no evidence that partial-birth abortions are ever necessary to preserve the life or health of the mother.

In fact, the evidence presented before the Senate Judiciary Committee and before the House Judiciary Committee demonstrated that this procedure is often more dangerous to the life or health of the mother than the other procedures used for late-term abortions.

Second, it is unclear whether Thornburgh and Danforth are any longer good law. Casey overruled much of the holdings of these cases, and scholarly commentary—not to mention pro-abortion activists—initially attacked Casey for overruling several such abortion cases.

Indeed, the very trimester framework employed by Thornburgh and Danforth was clearly overruled by Casey.

Third, the statutes in Thornburgh and Danforth were clearly and utterly different from the bill before us. The State law in Thornburgh required that a second physician be present during a postviability abortion and that a physician performing a postviability abortion had to attempt to preserve the life and health of the unborn child.

This bill does not place such an obligation upon the physician. Indeed, the physician is free to use any other abortion procedure he or she sees fit to protect the life and health of the mother, aside from the partial-birth method.

Indeed, should the life of the mother be threatened, this bill even permits the physician to employ partial-birth procedures.

In Danforth, the state law outlawed the safest and most common abortion procedure for first trimester abortions. The Court struck down that statute because it constituted a barely veiled attempt to outlaw first-trimester abortions entirely.

Here, there is nothing of the sort. In fact, the bill permits the continued use of the more popular, and safe, methods of late-term abortions.

Turning to the second main criticism, the administration and other opponents claim that the bill is unconstitutional because it permits a doctor to justify a partial-birth abortion only as an affirmative defense to a prosecution.

The fact that the bill provides the exception required by the caselaw in an affirmative defense does not unduly burden the right to an abortion.

As I noted when I spoke about this bill last month, many of our constitutional rights arise only as an affirmative defense. Many of the protections of the Bill of Rights sometimes can only be raised as a defense to a prosecution.

To claim that the right to an abortion is not protected by an affirmative defense demeans the explicit protections of the Bill of Rights; and it raises abortion above any other right in the Constitution.

Again, top legal experts I have consulted agree that there is nothing unusual in having one's personal rights evaluated by means of an affirmative defense.

As Professor Kmiec testified before the Judiciary Committee, the Supreme Court has approved the common practice of States to place upon criminal defendants the burden of proving affirmative defenses, such as insanity or killing in self-defense.

In fact, as both Professor Kmiec and former Attorney General Barr note, it makes sense for this burden to fall upon the doctor, for it is the doctor who is uniquely well-positioned to establish that he or she reasonably believed both that the abortion was necessary to save the mother's life and that no other procedure would suffice.

Let me address two other minor arguments that have arisen.

First, there are those who argue that Congress lacks power under the interstate commerce clause to regulate the practice of abortion.

It is incredible to me that those who were in favor of the Freedom of Choice Act and the Access to Clinics Act would raise such an argument. Nonetheless, I will give it the swift dismissal that it deserves.

Whatever one might think about the expansion of Federal power under the commerce clause, whether H.R. 1833 falls within this power ''poses an easy case under current interpretation,'' as Professor McConnell puts it.

We can all agree that the provision of medical services are commercial activities and that abortions are medical services. Even after the decision last Term in Lopez, the Court has been fairly clear that Congress may regulate all commercial activities, because they frequently involve an interstate market.

If Congress can regulate health care, which it does today in myriad different ways, it can regulate abortions. And, if this bill is unconstitutional, then a whole host of other laws, starting with the Access to Clinics Act, are unconstitutional as well.

Second, some argue that this bill will unfairly punish nonphysicians, even though only those performing the partial-birth abortion are subject to its criminal penalties. They claim that Federal aiding-and-abetting laws or misprison laws will hold liable nurses, anesthesiologists, or even rape counselors.

This argument does not even qualify as makeweight. For example, to be guilty of a misprison of felony, one must not just fail to report a crime; one must actually engage in an affirmative, overt act of concealment of a felony.

As Professor Kmiec concludes, ''Logic, prosecutorial discretion under the policies of the Department of Justice, and the strict scienter element necessary to prove beyond a reasonable doubt the underlying offense, all suggest that any possible criminal liability . . . under freestanding conspiracy,

misprison, or aiding and abetting statutes is highly speculative, if not farfetched.'' One cannot help but agree with him.

The weight of both evidence and logic lead us to the conclusion that constitutional objections to this legislation are mere red herrings designed to throw the debate off of the real issue—whether or not this horrible procedure is justified.

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I rise today in strong support of H.R. 1833, the partial-birth abortion ban bill. Mr. President, as you and the Members of the Senate know, on November 8, after 2 days of very spirited debate, this Senate voted to commit this bill to the Judiciary Committee for hearings. There were a number of concerns that had been raised on the Senate floor. A number of these concerns, quite frankly, were addressed during the Judiciary Committee hearing that I attended. So I would like for a moment to take the Members of the Senate back to the debate that we had on the Senate floor in regard to several of the points that were made by the opponents of this bill and see how the points that were made on that date, November 8, were, in fact, answered by the testimony that our Judiciary Committee, under Chairman HATCH, heard, the testimony that we heard at that committee, how it relates to the arguments made by the opponents.

Let me start, Mr. President, with Brenda Shafer. Brenda Shafer, as my colleagues will recall, is the nurse from the Dayton area who has described in great detail exactly what this procedure consists of. My colleague, Senator SMITH, has in great detail described that as well.

While we were debating this issue on the Senate floor the last time it was up, on November 8, Brenda Shafer's credibility was attacked, was attacked by the opponents of this bill. Let me say, Mr. President, after having watched Brenda Shafer testify, I do not believe anyone could have watched her testimony, could have listened to her testimony, could have observed her demeanor, and not come away with the conclusion that she was not only telling the truth, but that what she saw was etched and will be etched in her memory for the rest of her life.

Like some other Members of this body, Mr. President, I have been involved as an attorney in lawsuits. I was a county prosecutor for 4 years, assistant for 2½ years prior to that. I have seen hundreds, probably thousands, of witnesses on the stand. I cannot recall a more compelling witness than Brenda Shafer. If anyone doubts that, I would invite them to go back—do not just read the transcript that is available, but go back and get a video tape from C-SPAN of her testimony.

Let me take a couple points where nurse Shafer was attacked on this floor and talk about how those particular attacks were rebutted by her testimony. Nurse Shafer said that the partial-birth abortion procedure was performed past the 24th week of pregnancy. She was attacked on the Senate floor for saying that.

One Senator quoted from a letter from a supervising nurse at the clinic where Brenda Shafer worked to the effect that ''Dr. Haskell does not perform abortions past 24 weeks of pregnancy.'' This is a document entitled ''Second Trimester Abortion: From Every Angle, Fall Risk Management Seminar, September 13–14, 1992, Dallas, Texas.''

On page 27 of this transcript, there was a paper delivered by Dr. Martin Haskell, ''Dilation and Extraction for Late Second Trimester Abortion, presented at the National Abortion Federation Risk Management Seminar, September 13, 1992.''

On page 28 of this document—this is Dr. Haskell's own words—this is what he said, the author—now remember this is the same person that Brenda Shafer observed performing the abortion. ''The author,'' Dr. Haskell, referring to himself, ''performs the procedure on selected patients 25 through 26 weeks LMP.''

So Dr. Haskell, in his own writing, confirms what nurse Shafer said.

Let me turn to another point. The nurse was attacked also for her comments about ultrasound. On this floor from the same letter, a Senator quoted, ''Dr. Haskell does not use ultrasound.'' Again, in Dr. Haskell's own report, this is what he says: ''The surgical assistant places an ultrasound probe on the patient's abdomen * * *.'' Again, Dr. Haskell's own comments.

In conclusion, I would simply say that again I would invite my colleagues to listen to her testimony. Her testimony is compelling. It is shocking. It is sickening. And it also is backed up by the doctor who performed that abortion, that is, Dr. Haskell, in his own words.

Let me turn to another issue that was raised on this floor in the last debate. Anesthesia. After the bill was introduced, bill opponents argued, without medical evidence, that the anesthesia that was administered to the mother killed the baby, so the baby felt no pain. That was the statement that was made. One U.S. Senator said the following. Let me read directly from the Congressional RECORD. ''The fetus dies during the first dose of anesthesia.'' That is from the CONGRESSIONAL RECORD. That was said on this floor.

Further, Dr. Mary Campbell of Planned Parenthood in a fact sheet said the following, in answer to a question, ''When does the fetus die?'' ''The fetus dies of an overdose of anesthesia given to the mother intravenously.''

Further, Kate Michelman of NARAL, at a NARAL news conference, November 7, 1995, here is what she said. ''There has been expert testimony by physicians who do this procedure stating that the anesthesia that is given to the pregnant women prior to the procedure causes fetal demise, the death of the fetus, prior to the procedure.''

Now, Mr. President, in spite of these three comments, in spite of the three assertions that were made on this floor, the facts are directly contrary to this.

This was brought out very clearly—very clearly—in the Judiciary Committee hearing. Again, I invite my colleagues to examine the record.

The confusion raised by these statements was so great in fact, Mr. President, that the American society came forward to set the record straight, a society of people who do this every day, who administer anesthesia.

Mr. Norwig Ellison, president of ASA, came forward and testified at the Judiciary Committee hearing. This is his written statement that was presented that day, and then he gave an oral statement where he stated it again. This is what he had to say:

> The widespread publicity given to this view may cause pregnant women to delay necessary and perhaps lifesaving medical procedures.

He further said:

> Pregnant women are routinely heavily sedated during the second and third trimester for the performance of a variety of necessary medical procedures with absolutely no adverse effect on the fetus, let alone death or brain death.

Also at the hearing, when confronted with this fact, Dr. Campbell, who I quoted earlier, changed her position. At the hearing, Senator SPENCE ABRAHAM from Michigan asked her about the position, referring to the fact sheet that the fetus dies of an overdose of anesthesia. Senator ABRAHAM said, ''This is no longer your position?''

Dr. Campbell replied: ''I believe that is true.''

In other words, she no longer holds the position that the fetus dies from anesthesia.

Further, Dr. Haskell, who performed this procedure on numerous occasions, himself had no doubts on this issue. The American Medical News asked Dr. Haskell the following question: ''Let's talk first about whether or not the fetus is dead beforehand.''

Dr. Haskell responded: ''No, no it's not. No, it's really not. A percentage are for various number of reasons and probably the other two-thirds are not.''

Again, one of the allegations that was made on this floor that the hearings clearly showed was wrong.

Some of the opponents of the bill would have the Members of this Senate and the American people believe that this debate is about whether we ban all abortions. It is sad that this bill is really not about partial-birth abortions, that what it really is is a covert assault on the decision in Roe versus Wade. This is totally false. Look at some of the people lining up behind this legislation: Congressman DAVE BONIOR, SUSAN MOLINARI, PATRICK KENNEDY, DICK GEPHARDT. These individuals are pro-choice. No one has questioned their pro-choice credentials.

They voted for this bill because they believe this is, in fact, a legitimate public policy issue.

Mr. President, this is a legitimate public policy issue. This procedure is especially cruel, it is unusual, it is inhumane, and it should be abolished.

It is perfectly possible and intellectually consistent and coherent to endorse this legislation and simultaneously support the Supreme Court decision in Roe versus Wade. This bill is not a ban on abortions. It is not even a restriction on when an abortion may be performed. Restrictions of that kind were actually envisioned by Roe versus Wade, based as it was on the differences of three trimesters of a pregnancy, but this bill does not do that.

Even so, even though Roe v. Wade allowed for that kind of restriction, this bill does not restrict the timeframe for a woman contemplating an abortion. All this bill does is abolish one particular procedure.

By now, we have all heard this procedure described in considerable detail. I hope that we can agree that this procedure is especially cruel, unusual, and inhumane. This debate is about a very, very, very limited number of abortions. It is a narrow, and should be narrowly structured, debate. To my friends on the other side who argue that we simply have to continue to allow this particular procedure to exist I simply say, is there not any limit to what we as a society will tolerate, what we as a society will accept? How close to an actual birth do we have to get in seconds, in inches, before we say, no?

Mr. President, the two witnesses who testified in front of our committee—my colleague from Illinois and my colleague from California have referenced them—gave some very heart-wrenching testimony. No one could have sat through that hearing without being moved, touched—really those terms are not adequate for how anyone would feel, certainly as I felt as I listened to the testimony.

I think, though, that what we need to remember is that neither of these two tragic situations would have been affected by the bill we are debating. H.R. 1833 covers only living fetuses, not fetuses that have died in the womb. In both the cases, in both the tragedies that were related by the witnesses, their babies had died prior to birth. Their babies had died in the womb. So this bill simply would not cover them.

We will continue to hear, I am sure, on this floor the argument made that we should look at these two heart-wrenching situations. I simply remind my colleagues, whether in the Chamber or back in their office listening to this debate, that we all agree these are just heart-wrenching situations. But we also should understand, and I ask my colleagues to keep in mind, that these two situations are simply not covered by this bill, and so it is really a bogus argument.

Mr. President, I yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER (Mr. DEWINE). The Senator from California.

Mrs. BOXER. Thank you, Mr. President. The Senator from Ohio raises a very important question—and I am paraphrasing it and if I do not do it right, he will let me know—when he asked this rhetorical question: How close do you get to a birth before you just say no to abortion?

I think, clearly, that is a crucial question to be raised. That was the question raised in Roe versus Wade when, in 1973, the Supreme Court looked at the entire issue and tried to answer that question. What they basically said was that in the first 3 months of a woman's pregnancy, she is going to have the right to choose and she is going to make that decision with her God. Government is going to stay out of that decision. That is between her and her God. And as the pregnancy develops, the State has an interest. Clearly, States may regulate later in the pregnancy, and they do. But always under Roe versus Wade, the life and health of the mother is paramount.

When my friend from Ohio says the most compelling testimony was from a nurse, it shows his point of view here because I have heard back from members of that Judiciary Committee, even on the other side of the issue, who said they were riveted to Coreen Costello and to Viki Wilson. They were riveted to hear a story from a pro-life Republican about how she faced this and had to choose this procedure for her life and her health and because of her deep and abiding love, not only because she wanted to live on this planet but for her beautiful children.

So I guess, to me, what is more compelling than someone who served in the clinic for 3 days and comes away and talks about it—I ask unanimous consent to have printed in the RECORD at this time a letter from Nurse Shafer's supervisor, Christie Gallivan, an R.N.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE WOMEN'S MED+CENTER,
Cincinnati, OH, July 17, 1995.

DEAR CONGRESSWOMAN SCHROEDER: I am a registered nurse and have worked since July, 1993, in the Dayton office of Dr. Martin Haskell. In this capacity, I was the nurse that supervised the training of Brenda Pratt during her brief temporary employment at the Women's Medical Center of Dayton. As you know, we initially conducted a search of our employment records under the name ''Brenda Shafer,'' as this was the name she signed to the letter which was given to us. When provided with the correct last name, we did in fact find the record of her three-day employment at our Dayton facility.

The information provided by Ms. Pratt as to our practices at the Women's Medical Center of Dayton is largely inaccurate. First, she describes Dr. Haskell performing one 25-week and one 26-week abortion procedure. Dr. Haskell does not perform abortions past 24 weeks of pregnancy. This is a self-imposed limit to which he has scrupulously adhered throughout the time I have worked for him.

Second, Dr. Haskell does not use ultrasound in the performance of second-trimester procedures. We use ultrasound only to determine the pregnancy's gestation. Therefore, her entire description of her experience when viewing a second-trimester abortion, which includes Dr. Haskell's using the ultrasound while doing the procedure, is clearly questionable.

Finally, at no point during a dilatation and extraction or intact D&E is there any fetal movement or response that would indicate awareness, pain or struggle. Ms. Pratt absolutely could not have witnessed fetal movement as she describes. We do not train temporary nurses in second trimester dilatation and extraction, since it is a highly technical procedure and would not be performed by someone in a temporary capacity. If, indeed, Ms. Pratt entered the operating room at any point during a D&X procedure, she clearly either is misrepresenting what she saw or remembers it incorrectly.

If you have any further questions, please feel free to contact our office.

Sincerely,

CHRISTIE GALLIVAN, RN.

Mrs. BOXER. In this letter, Nurse Gallivan says:

We do not train temporary nurses in second trimester dilatation and extraction, since it is a highly technical procedure and would not be performed by someone in a temporary capacity. If, indeed, Ms. Pratt entered the operating room at any point . . . she clearly either is misrepresenting what she saw or remembers it incorrectly.

Since we are talking about compelling testimony from a nurse, I think it is very compelling that the American Nurses Association has written as follows:

I am writing to express the opposition of the American Nurses Association to H.R. 1833 . . . which is scheduled to be considered by the Senate this week. The legislation would impose Federal criminal penalties and provide for civil actions against health care providers who perform certain late-term abortions.

In the view of the American Nurses Association this proposal would involve an inappropriate intrusion of the Federal Government into a therapeutic decision that should be left in the hands of a pregnant woman and her health care provider.

They go on to say:

This legislation would impose a significant barrier to these principles.

. . . The American Nurses Association is the only full-time professional organization representing the nation's 2.2 million Registered Nurses through its 53 constituent associations.

They respectfully urge us to vote against this bill. I ask unanimous consent that this letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

AMERICAN NURSES ASSOCIATION,
Washington, DC, November 8, 1995.

Hon. BARBARA BOXER,
U.S. Senate, Washington, DC.

DEAR SENATOR BOXER: I am writing to express the opposition of the American Nurses Association to H.R. 1833, the ''Partial-Birth Abortion Ban Act of 1995'', which is scheduled to be considered by the Senate this week. This legislation would impose Federal criminal penalties and provide for civil actions against health care providers who perform certain late-term abortions.

It is the view of the American Nurses Association that this proposal would involve an

inappropriate intrusion of the federal government into a therapeutic decision that should be left in the hands of a pregnant woman and her health care provider. ANA has long supported freedom of choice and equitable access of all women to basic health services, including services related to reproductive health. This legislation would impose a significant barrier to those principles.

Furthermore, very few of those late-term abortions are performed each year and they are usually necessary either to protect the life of the mother or because of severe fetal abnormalities. It is inappropriate for Congress to mandate a course of action for a woman who is already faced with an intensely personal and difficult decision. This procedure can mean the difference between life and death for a woman.

The American Nurses Association is the only full-service professional organization representing the nation's 2.2 million Registered Nurses through its 53 constituent associations. ANA advances the nursing profession by fostering high standards of nursing practice, promoting the economic and general welfare of nurses in the workplace, projecting a positive and realistic view of nursing, and by lobbying the Congress and regulatory agencies on health care issues affecting nurses and the public.

The American Nurses Association respectfully urges you to vote against H.R. 1833 when it is brought before the Senate.

GERI MARULLO, MSN, RN,
Executive Director.

Mrs. BOXER. When we look at people who nurture, who bring their love into medicine, who bring their compassion into medicine, who have been known to place themselves at risk in the work that they do to save lives, I think it is very important to note that the American Nurses Association strongly opposes this bill.

We know that Viki Wilson, whose testimony was read so eloquently by Senator SIMON, is a pediatric nurse, and she found herself in this circumstance. So if we want to talk about compelling testimony, I guess there was a lot of compelling testimony.

The reason I am keeping this family portrait up here is because I want to keep this family's face right up here. Because with all the talk about medicine and all the charts of drawings of medical procedures, as if we were a medical school here, this has been forgotten. I will not allow these families to be forgotten in this debate. This mother, this wife, this husband and father, and these children, who could have lost this extraordinary woman, who happens to be a pro-life Republican, and who, by the way, wrote in her Op-Ed to the New York Times—that is why I was grateful that we had the hearing, because more attention was paid to this. She said, ''Those who want Congress to ban the controversial late-term abortion technique might think I would be an ally. I was raised in a conservative, religious family. My parents are Rush Limbaugh fans. I am a Republican that always believed that abortion was wrong. Then I had one.'' Then she goes into the pain of this late-term abortion, which was her only option. So, yes, I am leaving her face up here through this debate.

For those people who do not support a woman's right to choose, who say that this bill is consistent with Roe versus Wade, I remind you that Roe is very clear. Always the life and health of the woman is paramount—always, even when a State can in fact regulate abortion, which Roe says they can do under certain circumstances. There is a State interest. The woman's life and her health must always be protected, always be protected. Yes, we had physicians who said this procedure is not necessary to do, but we had others who said, clearly, that it is quite necessary.

As a matter of fact, Coreen Costello, age 31, pregnant now with her third child, her doctor said a cesarean section or induction of labor could well have cost her life.

Well, Mr. President, we are going to have a long time more to debate this. I am not going to go on too long this evening. My friend has been patient and has a lot more to say.

There is no such thing as a partial-birth abortion. There is no such terminology. There is no such thing. There is such a thing as a late-term abortion, and it is always tragic and always undertaken because it is an emergency procedure. The life of mothers like Coreen may well be at stake, or serious adverse health consequences may arise from severe fetal abnormalities, such as organs growing outside the body. These late-term abortions are not births or partial births. They are the most tragic emergency medical procedures.

So I ask again, why is the Senate taking this up—a ban on a particular procedure used in these tragic operations? Is it because nobody is regulating these abortions? No. I explained that in Roe versus Wade clearly the State has the right to, and States do, regulate late-term abortions. Is it because there is a surge in late-term abortions? No. That is not the case.

My colleagues will say that they are doing this because this is a terrible procedure. They throw away the arguments by physicians who say it is a necessary life-saving procedure and only quote those doctors who say it is not. I thought you people were conservative. You should take the conservative position. If even a handful of doctors think a woman is more likely to die—14 times more likely if she undergoes cesarean section—then take the conservative approach and give the physician every tool he or she can have, so that it can be a safe emergency procedure, so women like Coreen Costello and Viki Wilson, and the others we will talk about in debate later, will live.

Well, I think I know what the real agenda is. I do not think it is a surprise. It is not going to shatter anybody's mind when I say this. I think there is a group of Senators who want to make abortion illegal in this country. They ran on that platform. They are committed to doing it. They feel a woman should not have a right to choose.

If it was up to them, they would criminalize this procedure. They would put the woman in jail. They would put the doctor in jail. They do not have the votes, folks. They do not have the votes to outlaw abortion. They wish they did.

Now, with this Republican Congress they have more votes than they have ever had before, and I hope people in this country understand that. But they still do not have the votes to outlaw abortion straight out.

Just like those who came here to destroy environmental protection, they do not have the votes to outlaw the Clean Air Act or the Clean Water Act. So what do you do? Cut the Environmental Protection Agency by a third; cut enforcement by two-thirds. This way you do not have to go just right at it and repeal the laws.

The same thing here, but another issue. They do not have the votes to outlaw abortion. The Supreme Court, much to their dismay, upheld Roe. They have said abortion is a constitutional right. So these Senators are trying to outlaw abortion not directly but indirectly and they will take every chance to do it. That is what this is about.

Already, we have seen an erosion of a woman's right to choose. No abortion in military hospitals. Imagine, it is your daughter, she is stationed in Saudi Arabia, she cannot go to a military hospital. God knows where she will go.

As Senator SIMPSON said, and I read every word he said, when abortion was illegal in this country, women obtained abortion. A woman risked her freedom to try and get an abortion. Doctors did the same.

I lived through those days. Women died. They died in back alleys. They lost their fertility. We are not going back to those days. But there are those in the Senate who want to take us back. That is what this is about.

They may say it is nothing, you could be pro-choice and support this. That is fine. They can say it. But if you read behind the lines, you know that is the plan. That is the plan of the far right in this country. Take the victories where you get them. Force the President to sign the defense bill. Ipso facto outlaw abortion in military hospitals.

Now, if you are a Federal employee and happen to be a woman, you cannot use your own insurance for which you pay a good portion of the premium, you cannot use it to get an abortion. OK, that is gone.

How about this: one of the reasons the Health and Human Services bill has not been brought up here is there are those in this Senate who want to stop training ob-gyn's to perform abortion. Folks, listen: It does not say stop training them in this procedure. It says stop training medical students so that no one will know how to do a safe and legal abortion in this country.

I stood here on this floor and I objected to bringing that bill forward because I knew that would be offered.

How does that help a woman in this country, when she has to go back to the back alleys, and the men in this Chamber stand up and talk about the joy of giving birth?

I had the joy. Do not lecture me about that. And do not tell my children and my grandchildren that you know better for them than their God and their daughter and their husbands and their wives. Do not do that.

That is not what this Republican revolution was supposed to be about; if anything, it was supposed to be about getting Government out of our lives. Now they are putting it in the hospital room, in the medical school.

We said when this came up, we should have a hearing. We want to put a woman's face on it. We see these drawings. Time after time, day after day—where is the face of the mother? Where is the face of her husband? Where is the face of her children?

No, we did not see that face, but we got that face. We had the time to get that face into those hearings. I am so glad colleagues stuck with us on that one. It was going to be a close vote.

Yes, I hope our colleagues will read the testimony—all sides—and they will find that the medical community is split. The lawyers are split. We already know the Nurses Association is strongly against this bill. Yes, we had one nurse who is for it who worked 3 days as a temporary employee. That is if we believe the veracity of her testimony. Yes, we have some doctors who say the procedure is not necessary. But the obgyn organization says this bill is bad.

But no one can dispute Coreen Costello or Viki Wilson or John and Kim Leonetti, who I will talk about later in this debate, or the many others who had the courage to come forward and tell their story. They are religious women. They are God-loving mothers. No one on the other side of this would dare stand up and say what they said was not accurate. They lived it.

That is what this is about. This is what is going to happen if this bill passes and it is signed into law without exception. People like this do not have a chance.

We have a lot of work to do, as I said, in this Senate. We have a lot of appropriations bills we have to pass. We have to have a pass on Bosnia. We cannot even agree on a budget, can barely agree on the size of the table that we are going to sit around. We have work to do.

I say people sent us here to fight about those priorities. I want that debate. I want to know how Medicare survives after you cut $270 billion out of it. I want to know how Medicaid survives when you cut $182 billion out of it. I want to know how senior citizens are better off when you repeal nursing home standards and go back.

You want to talk about compelling? Why do you not read what it was like in the 1980's before we had nursing home standards from the Federal Government. It was pretty compelling. Grandmothers and grandfathers were sexually abused, mistreated, scalded in the bathtub.

We have a lot of work to do. We should not get into what medical procedure is appropriate and what medical procedure is not.

I will say this to my colleagues. If this bill becomes law as it is now written—I believe the chances of that are nil; there is not even an exception for life or health of the mother, but say it did—and someone's wife dies, someone in this Nation loses a wife and a loving partner because of the action of this body, I tell that person, even though their case could get kicked out of court, I would tell them to sue the pants off every U.S. Senator in this place who voted to outlaw a life-saving procedure. I would make that case that we have no business getting in the middle of a tragic family decision, playing God, playing doctor without the foggiest notion about what it means to make that tragic choice.

We talk about the joy of birth. God has blessed those people who have never known such a tragedy as these families have known. You are blessed that you never knew such a tragedy. But do not stand up here and say in every single case it is all beautiful. How you can even say that, in light of this testimony, is beyond belief.

One of the reasons we were so strong on having this testimony is because of what we heard here on this floor about how every birth is joyful, and there are no problems, and you do not need this procedure. I would have hoped we put that to rest, but it is back here again on the floor, calling doctors names, vicious names, because they helped a family like this. I say to you, if that doctor did not help this woman, that doctor would be violating the Hippocratic Oath.

So, I just hope we amend this bill. Abortion is a legal right in this country. If you want to take it on, if you want to have a bill introduced to make it illegal, to put women in jail, go ahead. Let us have that debate. But I really feel to set ourselves up as a special committee, like one of a hospital that delivers babies, to stand around here and talk about what procedure should be done and what should not be done, I just think we are off the mark as to what our responsibility is here.

This is going to be a very difficult debate. This is just a preview of it. I know my colleagues and I disagree. We try very hard not to be disagreeable with one another. I certainly do not feel disagreeable to my colleagues who take the other view.

I do feel, however, that they are looking at this in a way that ignores women like this, men like this, kids like this, families like this. So I will be bringing us back to these families, these circumstances.

When you legislate, you do not legislate for the majority of people. That is easy. Most times you do not even need to think about this subject.

Of course, we cannot close our eyes and say it is a beautiful, beautiful process, this process of birth. Nothing ever goes wrong, so therefore we are going to say any and all procedures that may have to be used in emergency, let us outlaw them, because maybe if we did, we would not need them.

That is not the way to legislate. You legislate in a conservative fashion. You give the most leeway to people who may need every option at their disposal to save a woman like this and spare her family.

So, yes, we will come back to this. We will debate it. We are going to try to amend this bill. It is a tough one, and I look forward to the remainder of the debate.

I again thank my friend from New Hampshire for his courtesy, for allowing me to continue and complete my remarks, and I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH. Mr. President, I heard during the course of the debate from the Senator from California that we should look in the eyes of a mother. She used her example of a woman who went through this very difficult decision, which I understand.

Here we can look into the eyes of a mother, Brenda Shafer. She has two children. She was horrified by what she saw, so horrified that she quit her job at that clinic.

We also heard the Senator from California make great mention of the life-of-the-mother exception. Of course, there is a life-of-the-mother exception in the bill, but it is easier to say it is not in there, so we can continue this debate, I guess; so we have something to say. But I guess my question would be something along these lines. If this is a life-of-the-mother threat that Brenda Shafer witnessed, why was it done in an abortion clinic? Why was it not done in a hospital? If the mother's life is under threat, then I would certainly think it would be done in a hospital where we could get the maximum medical attention, not in a clinic, whose specific and only purpose is to perform abortions. So, you see that is another falsehood that is being perpetrated in the debate here.

Also, another falsehood is we are somehow part of the radical right because we oppose this procedure. The radical right, we were called. In the House, PATRICK KENNEDY, son of the distinguished Senator from Massachusetts, voted for this. So he is in the radical right. I guess I must have missed something in the newspapers somewhere. I missed it, I guess. The minority leader, former majority leader of the House of Representatives, DICK GEPHARDT, is a member of the radical right. And so many others who were pro-choice who voted for this bill.

You see, the reason they voted for it is because those on the other side are the radical ones. Nurse Shafer was so horrified by this, to her everlasting

credit, she stood up and exposed this for what it is. It is not done to save the life of the mother. We have a life-of-the-mother exception, but this is not done to save the life of the mother. As I said, if it is to save the life of the mother, then get the mother to the hospital, not to an abortion clinic.

Nurse Shafer told the Judiciary Committee at its November 17 hearing on this bill that this partial-birth abortion that she witnessed was carried out—this is very important, I say to my colleagues—was carried out because the little boy involved, the one with the angelic face that she describes right here: ''I never went back to that clinic, but I am still haunted by the face of that little boy—it was the most perfect, angelic face I have ever seen.'' Do you know what that little boy was diagnosed with? Do you know why he was aborted? He was diagnosed with Down's syndrome.

I have heard a lot today on the floor, from the Senator from California and from the Senator from Illinois and others, that somehow I am in the business of playing God here. When a woman electively, selectively makes a decision to abort a child because it has Down's syndrome, that is the only reason, that is the little angelic face—because of that, only, that is what we are talking about here in this particular case—is that not playing God? Somehow there is a twisted sense of logic here.

I guess I have to wonder where we draw the line. Is it a missing foot, a deformed foot? Does that qualify for that decision? A cleft palate, does that qualify? I am having trouble understanding just where it comes down. Where does it come down? God? Playing God? Who is playing God here?

Think about it: Down's syndrome. Do you know, we see Down's syndrome people acting on television everyday. There is a television series involving a young man with Down's syndrome. This little baby boy was killed with a catheter to the back of his head because he had Down's syndrome, in the United States of America. He did nothing else. He did not do anything wrong. He did not commit any crimes.

Even killers on death row who are executed are done so more humanely than this little boy died because he had Down's syndrome. Where are we, in China? What is the next election, female child? Is that all right? Male child, twins, cannot handle that?

This little baby boy, described by Nurse Shafer, with scissors jammed into the back of his head and the catheter sucking his brains out, his crime was that he had Down's syndrome.

This little boy, as nurse Shafer said, was executed by Dr. Haskell because he had Down's syndrome. You know, it is no small irony, Mr. President, if I do say so myself, that we now see the sad spectacle—and it is a sad spectacle—of some of the Senate's most respected and vigorous liberal advocates of the rights of disabled persons in our society coming to the Senate floor to defend an abortion procedure that often targets disabled children, targets them for destruction for one reason—they have a disability.

That is what the Senator from California is talking about. No, I am not playing God, Mr. President. I am not. I am trying to prevent other people from playing God. I am not playing God when I am trying to protect those under the Constitution of the United States any more than I am playing God when I say that a person in this country has the right to the protection of life under the Constitution.

Later on in this debate we may see an amendment. Who knows, somebody may offer an amendment, offered by one or more of those so-called disabled rights advocates, seeking to exempt the disabled from this bill who are disabled through no fault of their own, through some genetic abnormality. How can they claim to be defenders of the rights of the disabled and turn around and single out to target, to execute, out of the womb—not in the womb; out of the womb—disabled babies? Disabled babies.

I would like to see an opportunity where one of these disabled young Americans today, perhaps a young man or woman with Down's syndrome, or perhaps someone with a cleft palate or perhaps someone with a foot or an arm missing due to some horrible birth defect, I would like to see that person come face to face with some of these U.S. Senators and look them in the eye and say, ''You know what? No, I don't have the same privileges you had in terms of health, but I am trying to make something of myself, I'm trying to contribute to society. And I'm doing it. And thank you, I don't appreciate it when you say you want to take my life because of what I was dealt.''

That is what this debate is about. That is what it is about, Mr. President—make no mistake about it—killing disabled children. One of the primary debating tactics that the defenders of the partial-birth abortions employ is to argue—they argue that this brutal, grizzly procedure is utilized only in the hard cases, only in medical emergencies, only in medical emergencies threatening the life of the mother or in the case of severe congenital abnormalities.

But the words, Mr. President, of the only living doctor in America who has publicly—I will strike the word ''confess''—admitted, publicly admitted that he does partial-birth abortions, Dr. Martin Haskell of Dayton, OH, has given the lie to this deceptive debating tactic. Haskell told the AMA News that the overwhelming majority—this is Haskell himself. This is not Smith, this is not the distinguished Senator from Ohio sitting in the Chair, this is not somebody from the pro-life movement; this is Dr. Haskell himself. And in the AMA News he said the overwhelming majority of the partial-birth abortions that he does are for elective reasons—elective reasons.

Haskell performed 1,000 of them. So 800 babies, 800 babies —who knows what those 800 babies may have been—doctors, lawyers, maybe somebody who came up with a cure for cancer, the first woman President, the first black President? Who knows. We will never know. They never had a chance.

In the United States of America this is going on. And people come down here on the floor, time and time again, every time we debate this issue, and accuse me and others of playing God. Haskell said, ''Most of my abortions are elective in that 20- to 24-week range, and probably 20 percent, 20 percent, 200 out of the 1,000 are for genetic reasons.''

So let us call it like it is and stop distorting the record and saying things that are not accurate down here. Let us call it like it is—1,000 abortions, partial-birth abortions in the birth canal, everything but the head; 800 elective, 200 for genetic reasons.

Haskell later tried to claim he had been misquoted. It turns out, however, that the AMA News tape recorded the interview. They tape recorded it. They prepared a transcript. There was not any misquoting in there. Dr. Haskell was quoted accurately.

Like I said earlier, Mr. President, no wonder he did not have the guts to appear before the Judiciary Committee and try to defend his employment of this, because you cannot defend it. They have a bit of a problem with Dr. Haskell's confession that he performs partial-birth abortions on perfectly healthy women with perfectly healthy babies.

We did not hear about that from the Senator from California. We did not hear anything about the perfectly healthy babies. We did not hear the Senator from California stand up on the floor and say, ''I support that healthy baby having the right to live and not die at the hands of an abortionist with a catheter and a pair of scissors to the back of the head.'' No, we did not hear about that.

They tried to claim that somehow the word ''elective'' includes ''hard cases,'' quote unquote. Well, Mr. President, that is another blatant and deliberate deception. And as we debate this bill, there is litigation going on in the U.S. District Court for the Southern District of Ohio, which I am sure the Senator in the chair is aware of, in which Dr. Haskell is challenging the constitutionality of Ohio's new State law banning partial-birth abortions. He is an advocate. I give him credit. He does not see anything wrong with it.

During the course of the proceedings in that case, Dr. Harlan Giles has testified about what ''elective'' means. Dr. Giles is an obstetrician-gynecologist at the Medical College of Pennsylvania and Allegheny General Hospital who has a subspecialty in the field of perinatology, which includes maternal fetal medicine, high-risk pregnancy, ultrasound and genetics.

During his testimony before the U.S. district court in Ohio, Dr. Giles was

asked to tell the court what an elective abortion is. What is it? Here is what Dr. Giles said:

> An elective abortion is a procedure carried out for a patient for whom there is no identifiable maternal or fetal indication. That is to say, the patient feels it would be in her best interest to terminate the pregnancy either on social grounds, emotional grounds, financial grounds, etc. If there are no medical indications from either a fetal or maternal standpoint, we refer to the termination as elective.

There we have it, Mr. President, 8½ months, bring the child 80 percent into the world, making sure you bring it out feet first so that it cannot breathe first, and kill it. That is exactly what we are doing. That is what an elective abortion is, not for medical reasons. Once in a while that is done. But that is not what we are talking about here in 80 percent of the cases.

To sum up what he said is an elective abortion, it is one that is done on a perfectly healthy mother with a perfectly healthy baby—not always. Therefore, what Dr. Haskell told the AMA News is that 80 percent of partial-birth abortions he does are done on perfectly healthy mothers with perfectly healthy babies. But we did not hear about that today—nothing. We did not hear about that at all. That is the truth.

I said during the outset of my remarks, Mr. President, that I would offer my colleagues a detailed assessment of the November 17 hearing that the Judiciary Committee held on this bill. I would like to focus a few remarks on that at the outset of this November 17 hearing. My colleague, Senator KENNEDY, described H.R. 1833 as ''extremist legislation at its worst.'' I found that somewhat puzzling that Senator KENNEDY would say this because his own son, Congressman PATRICK KENNEDY of Rhode Island, voted for the bill in the House, in the exact form that it is here before us in the Senate.

So I assume from that that he means his son is an extremist, and he may very well feel that way. I do not know. We already mentioned Mr. GEPHARDT and Mr. BONIOR. I guess they are extremists.

Mr. President, Senator KENNEDY got it wrong, with all due respect to my colleague. The real extremists are those who believe that partial-birth abortions should be legal through all 9 months of pregnancy. We are talking about in the latter months of pregnancy, the latter days in some cases. Those are the extremists; they think it is legal for Haskell to use this method to kill a little Down's syndrome baby. They are the extremists. That is who the extremists are.

Frankly, I initially opposed sending the bill to the committee for a hearing because I did not think it was necessary. But I am glad we had a hearing. As you know, I agreed to have it and allowed the vote to go that way, did not object, because I think that hearing transcript, which the distinguished Senator from Ohio had the opportunity to be a part of, is now available, and I invite my colleagues to review it in detail. Before you vote, read it. It demonstrates just how bankrupt the arguments are on this issue.

When this bill first came to the Senate floor on November 7 and 8, we heard the opposition floor manager, Senator BOXER, repeatedly assert that partial-birth abortions are emergency operations. Senator BOXER said it again today, undertaken to save women's lives. During the November 7 floor debate on this bill, for example, Senator BOXER referred to partial-birth abortion as ''an emergency medical procedure that must be performed on certain pregnant women lest families lose that mother forever.''

You heard it again today. During her appearance on ''Nightline'' with me on November 7, she claimed that partial-birth abortions are emergency medical procedures and asserted that H.R. 1833 would ''outlaw an emergency medical procedure.''

The next day, on November 8, Senator BOXER helped lead the charge on the Senate floor for a hearing on H.R. 1833. And when the Senate agreed to refer the bill to the Judiciary Committee for the hearing, it was incumbent upon Senator BOXER and allies on the committee to produce testimony to support her repeated assertions that a partial-birth abortion is an emergency medical procedure.

Well, they had plenty of time to prove it, but they failed to do so. You were there, Mr. President. The lead witness that the opponents of this bill presented was Dr. Nancy Campbell, who is the Medical Director for Planned Parenthood here in Washington. Far from claiming that any partial-birth abortions are undertaken as emergency procedures to save the lives of women, Dr. Campbell asserted that the vast majority of these procedures are done because of severe fetal malformations. So Dr. Campbell's testimony failed to support Senator BOXER's claims. A partial-birth abortion that is undertaken to destroy a baby because the baby has a disability is not necessarily an emergency abortion done to save the life of a mother. So it is not true what is being said here.

At some point in the debate, perhaps tomorrow when we go back to this debate—as the Chair knows, we are going to break at 7:30 and recess the Senate until tomorrow, but at the appropriate time I am going to read into the RECORD comments in a large number of letters from ob-gyn's who take a very interesting view of this bill. They support the bill, and they say the process of partial-birth abortions is simply not necessary to save the life of a mother.

In fact, regarding Dr. Campbell's assertion that the vast majority of partial-birth abortions are done because of severe fetal malformations, that is also unsupportable. Campbell cited no academic studies, no medical journal articles, no government or private statistics, nothing—nothing. Just stated it, no support. In fact, her statement to that effect appears only in the transcript of her oral argument, not in her written statement.

So as I pointed out earlier, the only reliable testimony that we have on this point comes from the only living doctor who is willing to admit publicly that he does these, Dr. Martin Haskell. Haskell told the American Medical Association News that 80 percent of the partial-birth abortions he does are purely for elective reasons. It is entirely reliable because he does them. The man knows what he is talking about. Give him credit for admitting it. He is telling the truth. He is not trying to hide it.

Campbell's assertion, on the other hand, is completely unreliable because she does not do partial-birth abortions and cited no other evidence to support her completely unsupported claim. It is interesting that they had Dr. Campbell testify and she does not do partial-birth abortions and the guy who does do it, Haskell, he does not testify. He cannot be here.

The only other medical witness on the other side was Dr. Courtland Robinson, who is a medical professor at Johns Hopkins, and during his testimony Robinson managed to contradict both Senator BOXER's claim that partial-birth abortions are done for emergency reasons to save women's lives and Dr. Campbell's assertion that the vast majority of them are done because of severe fetal abnormalities. On the other hand, though, Robinson's testimony supports Dr. Haskell's statement to the AMA News that the overwhelming majority, 80 percent of these abortions are done for purely elective reasons.

We have all heard the debate on abortion, about whether or not a woman has the right to choose in the first month, second month, third month. That is a debate that we have had on the Senate floor, and everyone knows where I come from on it. That is not the debate we are having on the Senate floor right now. We are having a debate on the Senate floor now as to whether or not we approve of this procedure that I have earlier described of allowing a child to be brought out through the birth canal with the exception of the head and killed with scissors and a catheter with no anesthetic. And as I said then, would you kill a pet, would you euthanize your pet in that way? Yet we do it to children.

During his oral testimony before the committee, Robinson said that ''women present to us for later abortions for a number of reasons. I am a doctor,'' Robinson continued, ''and it is not my place to judge my patient's reasons for ending a pregnancy or to punish her because circumstances prevented her from obtaining an abortion earlier. It is my place to treat my patient, a woman with a pregnancy she feels she cannot continue.

But bear in mind the timeframe we are talking about—5th through 9th month. I again give the doctor credit for his candor. In seeking to justify the use of the brutal and shockingly inhumane partial-birth procedure, Robinson did claim, as Senator BOXER does, that these are emergency medical procedures.

Neither did Robinson assert, as did Campbell, that the vast majority of such abortions are undertaken because of severe fetal malformations. No. Dr. Robinson told the truth. He corroborated what Dr. Haskell said—80 percent of the partial-birth abortions are purely elective.

So, in conclusion on that point, there are only two witnesses, medical witnesses, that the supporters of partial-birth abortions offered at the 17th of November Judiciary hearing—Campbell and Robinson. Neither one had ever performed a partial-birth abortion, and they flatly contradicted each other about why partial-birth abortions are performed, Campbell claiming the vast majority are because of severe fetal abnormalities, and Robinson said they are done for elective reasons—in other words, on demand. No consistency whatsoever.

Now, the next two witnesses that the supporters of partial-birth abortion presented—and this is the interesting part—were two women who had late-term abortions. Interestingly enough, however—and this was not brought out by the Senator from California—neither one of them had a partial-birth abortion. The Senator from Ohio pointed it out when he was speaking, that neither one of the women had a partial-birth abortion.

The stories they told before the committee were very compelling and very emotional, and I respect that. I understand it. But they were not partial-birth abortions. The first woman was Miss Coreen Costello of Agoura, CA. She explained to the committee that she sought a late-term abortion because her baby had severe deformities and was not expected to survive. She then described her abortion, and what she described was not a partial-birth abortion. It was not a partial-birth abortion.

She said her baby died in the womb before any part of her was removed. She said the baby was not stabbed in the head with scissors. Third, Miss Costello said no part of her brain was missing. Of course not. It was not a partial-birth abortion. The baby died in the womb. That is different.

Clearly, what Ms. Costello described is something else. I do not intend, Mr. President, to make light of the agony that Ms. Costello's anguish caused her over her baby's condition and her abortion. The only thing I want to point out is that this debate is about partial-birth abortions. They could not find anybody to testify who had a partial-birth abortion because the life of the mother was threatened. They could not find anybody to do it. That is my point. That is why we are here, to stop a brutal practice.

To be honest, Ms. Costello's testimony, although very emotional and very personal, is not relevant to the debate we are having today.

The second and last witness who had received a late-term abortion to support partial-birth abortions presented at the November 17 hearing was Viki Wilson. The Senator from Ohio mentioned her.

Ms. Wilson, like Ms. Costello, told the committee about her child's condition and why she had decided to have a late-term abortion. Like Ms. Costello, Ms. Wilson proceeded to describe an abortion that very clearly was not a partial-birth abortion.

She said her little girl died inside the womb. ''My daughter died with dignity inside my womb,'' Ms. Wilson testified. ''She was not stabbed in the back of the head with scissors, no one dragged her out half alive and killed her. We never would have allowed that.''

That is interesting, she never would have allowed that, but we are allowing it here. It is going on. Maybe she would not, and I give Ms. Wilson credit for saying she would not allow it, but others do and it is happening. One thousand Dr. Haskell performed. The estimates are one or two a day.

So not only did Ms. Wilson, like Ms. Costello, not have a partial-birth abortion, she also told the committee she never would have consented to it. Very interesting. Their witness.

In summary, Mr. President, the supporters of partial-birth abortions were not able to produce at the November 17 hearing a single doctor who had ever performed a partial-birth abortion. The only doctor who has publicly confessed to performing them refused to appear, and all they did produce was two doctors who had never done partial-birth abortions, but nonetheless speculated, and in the process contradicted one another about why partial-birth abortions are done.

In short, the supporters of partial-birth abortion produced not a single doctor who cast any doubt whatsoever on the one who has done them, Dr. Haskell. In his own unrefuted statement to the AMA News, 80 percent of partial-birth abortions he does are purely elective. Nobody refuted it.

The supporters of partial-birth abortion were not able to produce as a witness a single woman who had ever undergone a partial-birth abortion. Of course, they are out there, but they did not produce any.

Senator BOXER says that partial-birth abortions are an emergency, and yet she could not find anybody to say that. Other supporters of partial-birth abortions talk about how the procedure is done to eliminate children with severe abnormalities, yet they could not produce a witness who had a partial-birth abortion for that reason.

There you have it, the supporters of partial-birth abortion demanded a hearing to tell their side of the story, and what did they produce? Two doctors who had not done any and two women who had not had any. There is their hearing. They fought hard for it. They wanted it. They got it.

The last witness produced by the supporters of partial-birth abortion at the hearing was a constitutional law professor by the name of Louis Michael Seidman of Georgetown University Law Center. Frankly, as a Catholic myself, I am a little surprised that a Catholic university has on its payroll such a highly partisan, indeed enthusiastic, supporter of abortion on demand through all 9 months of pregnancy for any reason. But to each his own.

Predictably, given Professor Seidman's undisguised enthusiasm for a right to an abortion, that is, Roe versus Wade, it is not surprising he confidently predicted that the Court would strike H.R. 1833 if it were to be enacted.

The other constitutional law expert on the panel was Dr. Kmiec, who served as Assistant Attorney General of the United States at the Justice Department under President Reagan and who now is a professor of law at Notre Dame. He strongly disagreed with Professor Seidman, and I believe Professor Kmiec made, by far, the better case.

Much to my disappointment, though, the Supreme Court in 1992, by a vote of 5 to 4 in the case of Planned Parenthood versus Casey, reaffirmed the basic holding of Roe versus Wade. But the Court did not address in that case, which involved a Pennsylvania State law, a congressional statute like H.R. 1833 that aims to protect babies who have emerged into the birth canal from being brutally killed. Kmiec has no doubt this will be held constitutional if this law passes.

A born child is a constitutional person. Why is a little baby whose whole body beneath her head has already entered the birth canal and entered outside the birth canal be less of a person than one whose head remains inside the birth canal? Can someone please answer that question for me? Why is it any less a person? Three inches, three seconds; three inches, three seconds. If you do not stop the baby from being born, in 3 seconds it is out; it is a living child, 3 inches or 4. What is the difference? If somebody can tell me what the difference is, I sure would like to hear it.

Where in the Constitution does it say that the Congress is powerless to protect such a child from Dr. Haskell's scissors and catheter? Where in the Constitution, where in the Constitution does it say that?

The God-given right to life, of which Thomas Jefferson wrote in the magnificent Declaration of Independence, protects the right to life, liberty and the pursuit of happiness of each and every child who falls victim to Haskell's scissors and his suction catheter, and our great Constitution which guarantees the right of each and every person to

equal protection under the law protects these defenseless, partially born babies from being attacked by Dr. Haskell and other abortionists like him. The American people know it, and the people sitting in this Chamber now, members of the staff, they know it, my colleagues know it—we all know it. You ought to witness one of these things if you have any doubts. See if you can come away like Nurse Shafer and not be affected.

I am going to have a lot more to say on this tomorrow, but I know we have a gentleman's agreement to get this place closed down, because we do not have anybody else to relieve the Chair.

At this point, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DEWINE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SMITH). Without objection, it is so ordered.

Mr. DEWINE. Mr. President, I would like to take this opportunity to, very briefly, respond to the comments my colleague from California made a few moments ago. I will try to be brief because I realize that we will be debating this bill on other days.

My colleague from California placed in the RECORD a letter, which I might point out had already been placed in the RECORD in the previous days of debate. That was a letter from Nurse Shafer's supervisor. That letter calls into question some of the things that Nurse Shafer said, or in the words of my colleague from California, the supervisor doubts the veracity of the nurse.

Mr. President, let me again talk about the testimony that we heard in the Judiciary Committee that refutes the attacks on Nurse Shafer and that refutes this specific letter by the purported supervisor of Nurse Shafer. First, the issue of how far along, how many weeks along Dr. Haskell would continue to do abortions. Let me quote from the letter. ''Dr. Haskell does not perform abortions past 24 weeks of pregnancy.''

Wrong. Dr. Haskell does. Dr. Haskell says so himself. We have already put that into the RECORD in Dr. Haskell's own words.

Second, ''Dr. Haskell does not use ultrasound.'' Wrong. The record clearly shows he does. How do we know that? Because he says he does.

Third. ''At no point is there any fetal movement or response that would indicate awareness, pain, or struggle.'' Wrong. The testimony that we heard would indicate contrary to that.

So I do not think we should spend this entire debate talking about the veracity of Nurse Shafer. But, again, I would go back to what I said an hour ago and, that is, if anyone doubts her veracity, take the facts, compare them with what Dr. Haskell says, the man who performs the abortions. What you will find is that Nurse Shafer's description fits identically with what Dr. Haskell says he does himself.

So this is a red herring. This is a side issue. This is the old tactic that is always used in court or in a debate: When you do not have the facts, talk about something else. Attack somebody whose testimony you do not like. Let us continue, if we can, to try to focus on what this debate is all about. I will come back to that in a moment. Senator BOXER has quoted Ms. Costello and Ms. Wilson, who gave very compelling testimony. Yes, it was. I thought that in my previous statement I stated that.

Quite frankly, Mr. President, I do not see how anyone could have listened to their testimony and not have teared up. I did. Nobody who is a parent and nobody who has lost a child could listen to that and not become emotional. The hearts of everybody in that room went out to those two women. But let me again say, Mr. President, that their testimony was not relevant. Let us confine ourselves to the terms of this debate and to the terms of this bill. No matter how compelling or how emotional their testimony was, or how much our hearts go out to them, it does not alter the simple fact that this bill does not apply to their situations. And so, again, the opponents of this bill want to talk about everything in the world but the bill.

With all due respect, I believe that the attack on this bill that we have heard this afternoon, 90 percent—and that is a conservative estimate—of what was said in opposition to this bill is totally irrelevant. You may believe it, disbelieve it, agree with it, disagree with it, but it is irrelevant. This bill, I submit, Mr. President, has nothing to do with nursing home standards. It has nothing to do with the EPA. It has nothing to do with the environment. We can and will argue these issues on this floor. But let us, please, try to keep this debate to what the issues are in front of us.

Maybe on a note of personal privilege, if I could, Mr. President, my friend from California talks about the ''joy of giving birth.'' She used that phrase four or five times. I guess she was inferring that those of us who favor this bill use this term to in some way denigrate women and say that it is just an easy thing. Well, let me tell you, Mr. President, and let me assure my colleague from California, as the father of eight—but much more importantly, as the husband of the mother of eight, you are never going to catch this U.S. Senator in any way denigrating or in any way making light of birth. You are not going to find me minimizing the pain or the great accomplishment of the mother or the seriousness of the delivery.

Again, Mr. President, let us try to stay on the debate and try to stay on what is relevant. The opponents of this bill talk about protecting the life of the mother. I would, again, call to my colleagues' attention the affirmative defense that was in this bill when it was passed in the House. When many pro-choice Members of the House voted for this bill, that affirmative defense was in there. I also, though, refer my colleagues in the Senate to the evidence that came at the hearing. Again, this is the hearing that the opponents of this bill wanted. It was a good hearing, and we learned things. The evidence at the hearing clearly showed that this is a procedure that you would not use—that a doctor would not use to save the life of a mother. I point out that the testimony clearly showed that this procedure takes 3 days, from the time the woman comes in and you begin to treat the woman until the actual final act takes place. The testimony at the hearing was very clear. If the life of the mother was at stake, a doctor would not do this method, would not do this 3-day procedure. This procedure is not the ''standard of care'' in these cases.

So, again, we can talk about saving the life of the mother. But I maintain that it is outside the scope of this debate. We have the affirmative defense built into the law, built into this proposed law, and you also have testimony—medical testimony—that this is not the procedure you would use anyway.

Dr. Pamela Smith of Chicago's Mt. Sinai Medical Center testified that medical texts prescribe at least three other techniques, but not this one. I will not take the time of the Senate to go into all the medical details, but the testimony is clearly there.

I also point out that no one at the hearing—no one at the hearing—disputed Dr. Smith's testimony. That is the state of the record. We simply do not do this procedure. Again, confine ourselves to this debate.

Mr. President, the debate will go on. We will hear again from both sides, but we should try to narrow it and talk about what is at stake. It is not a question of, do we do away with Roe versus Wade? It is not a question about Republicans or Democrats or conservatives or liberals, or trends, or Republican Congresses or Democrat Congresses. It is about a very, very, very limited number of abortions that are performed each year. But they are performed. They are, I maintain, wrong.

I think the evidence is abundantly clear. My colleague who is in the chair and who has shown the pictures and who has talked about it in graphic detail has described exactly what this procedure consists of. So it is a public policy debate, of very limited scope, but of an important area. We define in this debate, as we do in many debates, what kind of a people we are.

To my friends who are pro-choice—and, again, I say being pro-choice, being for Roe versus Wade, is not inconsistent for being with this bill; in fact, you can be consistent and do that—I say to them and I say to my

friend from California and others who oppose this bill, is there not some limit, some limit, to what a civilized society will tolerate, to what a good and decent people will allow?

I think, Mr. President, in this bill we are saying, yes, there is a limit, however narrow that may be drawn, but there is a limit. So in this bill, in this public debate, as in many debates, we define and redefine and redefine what kind of a people we are and what we hold dear.

MORNING BUSINESS

SAFE DRINKING WATER ACT AMENDMENTS OF 1995

The text of the bill (S. 1316) to reauthorize and amend title XIV of the Public Health Service Act (commonly known as the ''Safe Drinking Water Act''), and for other purposes, as passed by the Senate on November 29, 1995, is as follows:

S. 1316

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the ''Safe Drinking Water Act Amendments of 1995''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

(c) REFERENCES TO TITLE XIV OF THE PUBLIC HEALTH SERVICE ACT.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title XIV of the Public Health Service Act (commonly known as the ''Safe Drinking Water Act'') (42 U.S.C. 300f et seq.).

SEC. 2. FINDINGS.

Congress finds that—

(1) safe drinking water is essential to the protection of public health;

(2) because the requirements of title XIV of the Public Health Service Act (commonly known as the ''Safe Drinking Water Act'') (42 U.S.C. 300f et seq.) now exceed the financial and technical capacity of some public water systems, especially many small public water systems, the Federal Government needs to provide assistance to communities to help the communities meet Federal drinking water requirements;

(3) the Federal Government commits to take steps to foster and maintain a genuine partnership with the States in the administration and implementation of the Safe Drinking Water Act;

(4) States play a central role in the implementation of safe drinking water programs, and States need increased financial resources and appropriate flexibility to ensure the prompt and effective development and implementation of drinking water programs;

(5) the existing process for the assessment and regulation of additional drinking water contaminants needs to be revised and improved to ensure that there is a sound scientific basis for drinking water regulations and that the standards established address the health risks posed by contaminants;

(6) procedures for assessing the health effects of contaminants and establishing drinking water standards should be revised to provide greater opportunity for public education and participation;

(7) in setting priorities with respect to the health risks from drinking water to be addressed and in selecting the appropriate level of regulation for contaminants in drinking water, risk assessment and benefit-cost analysis are important and useful tools for improving the efficiency and effectiveness of drinking water regulations to protect human health;

(8) more effective protection of public health requires—

(A) a Federal commitment to set priorities that will allow scarce Federal, State, and local resources to be targeted toward the drinking water problems of greatest public health concern; and

(B) maximizing the value of the different and complementary strengths and responsibilities of the Federal and State governments in those States that have primary enforcement responsibility for the Safe Drinking Water Act; and

(9) compliance with the requirements of the Safe Drinking Water Act continues to be a concern at public water systems experiencing technical and financial limitations, and Federal, State, and local governments need more resources and more effective authority to attain the objectives of the Safe Drinking Water Act.

SEC. 3. STATE REVOLVING LOAN FUNDS.

The title (42 U.S.C. 300f et seq.) is amended by adding at the end the following:

''PART G—STATE REVOLVING LOAN FUNDS

''GENERAL AUTHORITY

''SEC. 1471. (a) CAPITALIZATION GRANT AGREEMENTS.—The Administrator shall offer to enter into an agreement with each State to make capitalization grants to the State pursuant to section 1472 (referred to in this part as 'capitalization grants') to establish a drinking water treatment State revolving loan fund (referred to in this part as a 'State loan fund').

''(b) REQUIREMENTS OF AGREEMENTS.—An agreement entered into pursuant to this section shall establish, to the satisfaction of the Administrator, that—

''(1) the State has established a State loan fund that complies with the requirements of this part;

''(2) the State loan fund will be administered by an instrumentality of the State that has the powers and authorities that are required to operate the State loan fund in accordance with this part;

''(3) the State will deposit the capitalization grants into the State loan fund;

''(4) the State will deposit all loan repayments received, and interest earned on the amounts deposited into the State loan fund under this part, into the State loan fund;

''(5) the State will deposit into the State loan fund an amount equal to at least 20 percent of the total amount of each payment to be made to the State on or before the date on which the payment is made to the State, except as provided in subsection (c)(4);

''(6) the State will use funds in the State loan fund in accordance with an intended use plan prepared pursuant to section 1474(b);

''(7) the State and loan recipients that receive funds that the State makes available from the State loan fund will use accounting procedures that conform to generally accepted accounting principles, auditing procedures that conform to chapter 75 of title 31, United States Code (commonly known as the 'Single Audit Act of 1984'), and such fiscal procedures as the Administrator may prescribe; and

''(8) the State has adopted policies and procedures to ensure that loan recipients are reasonably likely to be able to repay a loan.

''(c) ADMINISTRATION OF STATE LOAN FUNDS.—

''(1) IN GENERAL.—The authority to establish assistance priorities for financial assistance provided with amounts deposited into the State loan fund shall reside in the State agency that has primary responsibility for the administration of the State program under section 1413, after consultation with other appropriate State agencies (as determined by the State): *Provided further*, That in nonprimacy States, the Governor shall determine which State agency will have the authority to establish assistance priorities for financial assistance provided with amounts deposited into the State loan fund.

''(2) FINANCIAL ADMINISTRATION.—A State may combine the financial administration of the State loan fund pursuant to this part with the financial administration of a State water pollution control revolving fund established by the State pursuant to title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.), or other State revolving funds providing financing for similar purposes, if the Administrator determines that the grants to be provided to the State under this part, and the loan repayments and interest deposited into the State loan fund pursuant to this part, will be separately accounted for and used solely for the purposes of and in compliance with the requirements of this part.

''(3) TRANSFER OF FUNDS.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, a Governor of a State may—

''(i) reserve up to 50 percent of a capitalization grant made pursuant to section 1472 and add the funds reserved to any funds provided to the State pursuant to section 601 of the Federal Water Pollution Control Act (33 U.S.C. 1381); and

''(ii) reserve in any year a dollar amount up to the dollar amount that may be reserved under clause (i) for that year from capitalization grants made pursuant to section 601 of such Act (33 U.S.C. 1381) and add